

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

15-CR-00637 (KAM)

United States Courthouse  
Brooklyn, New York

4  
5 -against-

December 05, 2017  
9:00 a.m.

6 EVAN GREEBEL,

7 Defendant.

8 -----x  
9 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL  
10 BEFORE THE HONORABLE KIYO A. MATSUMOTO  
11 UNITED STATES DISTRICT JUDGE  
BEFORE A JURY

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript  
25 produced by computer-aided transcription.

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1 (In open court.)

2 THE COURT: As soon as all the jurors are here we'll  
3 bring them in. Have a seat, please.

4 MR. BRODSKY: Your Honor, would we be able to talk  
5 about the document I have before Special Agent Delzotto --

6 THE COURT: Sure.

7 MR. BRODSKY: -- which is Defense Exhibit 124-61. I  
8 was tying that together, Your Honor, with Government  
9 Exhibit 459 in evidence.

10 THE COURT: All right, what is it you wanted to talk  
11 about?

12 MR. BRODSKY: Your Honor, in Government Exhibit 459  
13 on November 25th, 2012 between at 10:35 p.m. Mr. Shkreli asked  
14 Mr. Greebel, Can you prepare a surrender agreement for the  
15 Retrophin shares I've given out. And Mr. Greebel asks, one  
16 minute later, what is a surrender agreement, what do you want  
17 to do? And Mr. Shkreli says cancel a specific transfer I  
18 made. Then 29 seconds later in DX124-61 for identification,  
19 Mr. Shkreli forwards to Mr. Greebel an email that he had sent  
20 at 10:28 p.m., which was seven minutes before -- seven minutes  
21 before Mr. Shkreli had sent the email to Evan Greebel on  
22 Government Exhibit 459 in evidence asking, can you prepare a  
23 surrender agreement for the Retrophin shares I've given out.  
24 So seven minutes before he asks that surrender question to  
25 Mr. Shkreli in Government Exhibit 459, he had emailed a number

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1 of investors in Retrophin and says in the first paragraph,  
2 where -- in sum and substance, we're executing -- he's trying  
3 to execute a deal with Valeant and new investors, the new  
4 investors are putting money into the company and they want the  
5 current preferred investors, and he says the people on this  
6 email, to be lumped in. He explains why they want that,  
7 according to him, and then he says in the second paragraph,  
8 quote, I am asking you to, quote, give up, end quote, your  
9 common stock which was previously inducement to invest in the  
10 Series A preferred stock, end quote.

11 The plain meaning of give up your common stock is to  
12 surrender your common stock. So seven minutes after sending  
13 that email to those investors he then asks Mr. Greebel, in  
14 Government Exhibit 459, can you prepare a surrender agreement  
15 for the Retrophin shares I've given out. And Mr. Greebel asks  
16 him, as I said, in Government Exhibit 459, what's a surrender  
17 agreement, what do you want to do, and Mr. Shkreli responds at  
18 10:36 p.m., cancel the specific transfer I made. And then 29  
19 seconds minutes later forwards this.

20 I think, Your Honor, there can be no -- in my view  
21 certainly, very strong evidence that this November 25th, 2012  
22 email DX124-61 for identification ties directly into the  
23 advice he's seeking from Mr. Shkreli -- from Mr. Greebel in  
24 Government Exhibit 459 in evidence. And, Your Honor, I would  
25 offer DX124-61. It's admissible not for the truth whether

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1 it's true or not I don't care and I'm not offering it for its  
2 truth, and I'm happy to have an instruction to that effect,  
3 I'm offering it for the state of mind of Mr. Greebel in giving  
4 the advice he gave in Government Exhibit 459 in evidence. And  
5 it is extraordinarily exculpatory, in our view, it's a  
6 powerful piece of exculpatory evidence, because the government  
7 is tying, as they did through Special Agent Delzotto's  
8 testimony, they tied Government Exhibit 459 to an email that  
9 Mr. Greebel received on or about November 29, 4 to 5 days  
10 later, depending on which email you go from, and that is with  
11 respect to the transfer to Mr. Biestek -- from Mr. Biestek to  
12 Mr. Shkreli.

13 So given that that transfer on November 29th that  
14 email is at the heart of one of the government's three  
15 theories with respect to Count Seven and given that this is  
16 a -- DX124-61 is a highly exculpatory document that goes to  
17 Mr. Greebel's state of mind completely ties, in our view, to  
18 Government Exhibit 459, we believe it's admissible in evidence  
19 and admissible on cross-examination with Special Agent  
20 Delzotto.

21 THE COURT: Mr. Pitluck.

22 MR. PITLUCK: Well, obviously, Judge, there is a  
23 great number of things unpacked there, I'm not even going to  
24 address the argument to hear about anything that's highly  
25 exculpatory because we certainly don't agree with that.

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1           The bigger issue, Judge, is this is an email chain  
2 that is unrelated to the chains that the government offered in  
3 direct evidence through Special Agent Delzotto. It requires,  
4 as Mr. Brodsky just took five minutes to explain to you a  
5 number of leaps of interpretation as to why it's related to  
6 this, and I could dispute what is written in the other email  
7 on 124-61 and how it relates to this, but the point is that  
8 I'm not aware of a hearsay exception that allows something to  
9 come in because they think it might be juxtaposed against  
10 their case and requires interpretation.

11           Now, if we are going to take the position that every  
12 email Mr. Greebel receives is admitted not for the truth but  
13 for the effect on the listener, then it just literally means  
14 that every email that Mr. Greebel receives in this case is  
15 going to be admitted with the instruction of it's not being  
16 offered for the truth, but for the effect on the listener,  
17 which is, in my view, just totally improper. I should say in  
18 our view totally improper and certainly not a proper basis for  
19 cross-examination.

20           Special Agent Delzotto did not reference what this  
21 email meant or how it was interpreted or at all how it related  
22 to the following documents, and what defense counsel is now  
23 trying to do is put in their case on cross-examination through  
24 Special Agent Delzotto through an inadmissible, hearsay  
25 document that is clearly being offered for the truth of what

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1 Martin Shkreli said to the investors, because there is no way  
2 to argue that what Mr. Greebel thought and what effect it had  
3 is unrelated to the contents of the email, which is how do you  
4 know that the surrender agreement email that the government  
5 showed you is related to it, look at Mr. Shkreli's email in  
6 which he says he's trying to get people to give up common  
7 stock. That's just -- that's plainly being offered for the  
8 truth not just for the effect it had on Mr. Greebel and it's  
9 also not the basis for cross-examination.

10 THE COURT: I guess the question I have, and I think  
11 it's an issue that is not clear from either email -- well,  
12 it's not clear from Government Exhibit 459 whether the  
13 discussion that Mr. Shkreli is having with Mr. Greebel about  
14 surrender agreements and getting back stocks that he has given  
15 out, whether that refers to the Fearnow shareholders, or  
16 whether it refers to the investors with whom he settled.  
17 Because 124-61 is directed to investors. He's asking them to  
18 give up their common stock.

19 MR. BRODSKY: Your Honor, if I may. First, I'm  
20 happy to interpret the email and address it and connect it to.  
21 I just think, Your Honor, that I need to say this, if we're  
22 unable to put in emails that go to Mr. Greebel's state of mind  
23 we will have no defense.

24 THE COURT: Well, it's not a matter -- I'm just  
25 saying --

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1 MR. BRODSKY: I understand, Your Honor.

2 THE COURT: -- you need a evidentiary basis for  
3 admission. That's all. I don't --

4 MR. BRODSKY: I agree completely.

5 THE COURT: The rules apply to him as much as anyone  
6 else in any other case, right? Rule 16 applies, Rule 27  
7 applies --

8 MR. BRODSKY: I understand.

9 THE COURT: Rule 22.2 applies --

10 MR. BRODSKY: A hundred percent.

11 THE COURT: -- and it's not a Constitutional issue  
12 regarding this defendant or any other defendant. The federal  
13 rules apply --

14 MR. BRODSKY: Agreed.

15 THE COURT: -- evenly to every defendant and  
16 government any party in any criminal case.

17 MR. BRODSKY: Agreed, Your Honor. But my point is  
18 this, Your Honor, the government is putting in a select number  
19 of emails about what was in Mr. Greebel's head, that is their  
20 case. They are going to point to the emails about -- and they  
21 said it on sidebar multiple times when I made objections, that  
22 it was information that Mr. Greebel received and impacted what  
23 he did and what he knew. And they selected them which they  
24 have every right to do. We need to make sure that we put in  
25 the emails that tie to those same emails that show the

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1 information in Mr. Greebel's head that impacted him and that  
2 affect what advice he gave.

3 And so I'll connect these up, Your Honor, but on  
4 time alone, just on the time in which the email is sent, they  
5 are connected and I say that because, Your Honor, he sends the  
6 email -- he being Mr. Shkreli, sends the email in DX124-61 --

7 THE COURT: I know, seven minutes before --

8 MR. BRODSKY: Thirty-nine seconds after.

9 THE COURT: -- don't repeat --

10 MR. BRODSKY: I won't repeat.

11 THE COURT: -- what you've already said.

12 MR. BRODSKY: Here's how they connect, Your Honor.

13 On November -- the date we're talking about in DX124-61 is  
14 November 25th, 2012, Your Honor. There is no discussion at  
15 this time of Fearnow shares. What this is about is he's  
16 sending an email to Robert Bertolini, who is a direct investor  
17 in Retrophin, he's sending an email to Tom Koestler --

18 THE COURT: Koestler.

19 MR. BRODSKY: -- who is a direct investor in  
20 Retrophin; Brent Saunders who is a big direct investor in  
21 Retrophin; and Sarah Hassan who made an investment in  
22 Retrophin. He's sending the email -- and again it doesn't  
23 matter to me the interpretation of the email for purposes of  
24 getting the evidence in the record, but he's in negotiations  
25 at this time, as you heard from Mr. Aselage with respect to



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1 Valeant, he's trying to do the Valeant deal and you saw some  
2 emails about that during the case in chief of the government.  
3 And the Valeant deal falls apart and it doesn't come through.  
4 But he's saying to them that the new investors who are putting  
5 money into want you, you people on this email, Mr. Bertolini,  
6 Mr. Koestler, Mr. Saunders and Ms. Hassan to have the same  
7 class -- be lumped into the same class of shares. In the  
8 second paragraph he says, to do that I'm asking you to give up  
9 your common stock, which was previously inducement to invest  
10 in the Series A preferred stock. And he's saying, I'm asking  
11 you to give that up so that you can now be in the same class  
12 of preferred A shares -- preferred B shares, I guess he's  
13 calling it, as everybody else, as all the new investors and  
14 you. And then he sends the email -- and then he asks the  
15 question to Mr. Shkreli -- to Mr. Greebel in Government's  
16 Exhibit 459, can you prepare a surrender agreement for the  
17 Retrophin shares I have given out. So Mr. Shkreli, in our  
18 view, has given out these shares to Mr. Bertolini,  
19 Mr. Koestler --

20 THE COURT: But I thought you said they invested.  
21 They bought those shares, they weren't given to them.

22 MR. BRODSKY: Well, okay, fine.

23 THE COURT: Some of these investors were given  
24 shares as part of their settlement and I think what you just  
25 said when you started your explanation is that these folks,

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1 Bertolini, Koestler, Saunders and Hassan invested, so they  
2 bought their shares, they weren't given to them by  
3 Mr. Shkreli.

4 MR. BRODSKY: Your Honor, what happened was they  
5 were given common stock as a sweetener if they invested and  
6 got preferred. So they were preferred investors. And in  
7 order to induce them to get -- in the second sentence of the  
8 first paragraph he calls -- he says the current preferred  
9 investors, the people on this email. They were preferred  
10 investors. As a sweetener, he gave them common stock, he gave  
11 them, and he says I'm asking you to give up your common stock  
12 which was a previous inducement for you to invest. In order  
13 for you to invest in the Series A preferred stock I'm asking  
14 you to give up the common stock I gave to you.

15 And so when he asks the question on November 25th,  
16 seven minutes later to Mr. Greebel and says, surrender  
17 agreement, can you prepare a surrender agreement for the  
18 Retrophin shares I have given out, our argument, Your Honor,  
19 is that -- and given the timing is that it relates to this  
20 email. We believe that's a stronger argument than the  
21 government's argument which is that this email chain in  
22 Government Exhibit 459 relates to Marek Biestek's transfer of  
23 stock to Mr. Shkreli on November 29th, 2012 for 4,167 shares.  
24 I think that's the much stronger argument giving the tie and  
25 the time and the content of the email exchanges.

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1           So that is our good faith basis to tie the two  
2 together. Timing alone and the contents. And we believe,  
3 Your Honor, that it goes directly to Mr. Greebel's state of  
4 mind and that is the hearsay exception. There is no question  
5 this document is authentic, there's no question it's relevant  
6 under 401. Under 403 it is not unduly prejudicial, it doesn't  
7 cause confusion of the issues. We can tie the two together  
8 and under -- it's not hearsay because we're not offering it  
9 for the truth. We're offering it for the state of mind of  
10 Mr. Greebel and connecting it directly to this email in which  
11 he sends and he answers the question.

12           And so with all respect, Your Honor, the reason why  
13 I reacted the way I did is because the government has put in  
14 459 then they tied it to 111-15 in evidence which is the  
15 November 29th email and that's their argument connecting the  
16 two together, in my view is that's what they're going to  
17 argue. And if we don't have in DX124-61 we are severely  
18 harmed because we truly believe that those two emails are  
19 connected and not the November 29th email and it's highly  
20 exculpatory to us if we can connect it up to Defense  
21 Exhibit 124-61.

22           MR. PITLUCK: Your Honor, can I be heard?

23           THE COURT: Yes, go ahead.

24           MR. PITLUCK: Sorry, there's a few points I'd like  
25 to make. First of all, the primary point here is this is not

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1 the proper basis of cross-examination. There is no 106 issue  
2 here not even raising one. This is attempting to put in their  
3 case through our case agent which requires to Your Honor an  
4 elaborate explanation of Mr. Brodsky's view using facts that  
5 are not in evidence. And we can -- I don't even want to get  
6 into it and proffer why the statements in this email that  
7 Mr. Brodsky interpreted are not accurate, but the fact of the  
8 matter is that it's not the proper basis of cross-examination.  
9 They don't get to put on their case through our case agent,  
10 we've said that a number of times.

11           However, if it's related to the admissibility of  
12 this document I make two points: One is that Mr. Brodsky has  
13 repeatedly argued throughout this case and it has been borne  
14 out by the emails, timestamps are not always accurate, some  
15 are in GMT, some are not. So the notion on its face that it  
16 says 10:36 p.m. it could mean that it is later or earlier,  
17 they are both later or earlier but even putting that aside,  
18 the contents of this email, as Mr. Brodsky just argued, are  
19 being offered for their truth. They are being offered for the  
20 fact that Mr. Shkreli wrote this related to the investors and  
21 that these investors were being induced to give up their  
22 common stock in order for preferred which is totally different  
23 practically than surrendering and canceling a specific  
24 transaction, which we also know never happened. But they are  
25 now trying --

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1 THE COURT: What never happened?

2 MR. PITLUCK: The surrender.

3 THE COURT: The surrender by these investors?

4 MR. PITLUCK: Exactly. What we will chose to argue  
5 relating to the back-dating evidence is a matter for the jury  
6 at closing. But they don't get to try to -- because this is  
7 going to happen for the next 48 hours, where they're trying to  
8 take a document and say this relates to this broad subject  
9 matter, it's around the same time, around the same date but it  
10 is a different email chain, so based on our 20 minute proffer  
11 to you, Judge, on the evidence we think they're related and  
12 therefore we should be able to put it in is the more  
13 fundamental problem we have. This is not the proper basis for  
14 cross.

15 As the Court has said a number of times yesterday  
16 and today, there has to be an admissible basis for this. And  
17 the admissible for everything is not it has an effect on the  
18 listener because it is related to other documents we really  
19 thinks it's unfair. We used all the hearsay, the proper  
20 hearsay exceptions or exclusions to put in documents. And we  
21 have different hearsay exclusions, they don't get to put  
22 things in simply offered for their truth if there is no  
23 exception.

24 MR. BRODSKY: Your Honor --

25 MR. PITLUCK: And we're going to be doing this all

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1 day and I'd like to be able to obviously get our jury in and  
2 advance the case but...

3 MR. BRODSKY: Your Honor --

4 THE COURT: It seems to me this document could have  
5 been shown to Mr. Koestler.

6 MR. BRODSKY: Mr. Koestler was never testifying,  
7 Your Honor.

8 THE COURT: I'm sorry, Ms. Hassan then who did  
9 testify --

10 MR. BRODSKY: But not the top email.

11 THE COURT: -- and any of these witnesses obviously  
12 are available to both sides should they be called in either  
13 the government or defense case.

14 MR. BRODSKY: But not --

15 THE COURT: I'm not saying a specific basis for  
16 admissibility, that's really -- I mean the rules apply, right?

17 MR. BRODSKY: Your Honor, the rules totally apply.  
18 May I react first to the timestamp issue. We could connect it  
19 up to the metadata it's the actual time. The reason why you  
20 know it's the actual time because the only timestamps that are  
21 ever off in emails are the last email in the chain. And  
22 that's the only timestamp that's ever off. And in this one it  
23 is impossible for it to be off given that Mr. Shkreli's email  
24 is at 10 -- I think it was 10:25.

25 THE COURT: 10:28.

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1 MR. BRODSKY: 10:28. Then the next one is at 10 --

2 THE COURT: Thirty-six.

3 MR. BRODSKY: 10:36. So it's impossible for it to  
4 have been earlier in time. The earlier embedded emails have  
5 never been accurate.

6 Second, Your Honor, there is an admissible basis,  
7 Your Honor. I've laid out the admissible basis which is it  
8 also relates directly to the email that the government put  
9 into evidence.

10 If the objection, Your Honor, is that I shouldn't  
11 get it in on cross-examination of their witness, that I should  
12 call my own witness, I believe that I could call a paralegal,  
13 for example, and get it in on the case in chief because it  
14 meets the state of mind exception of Mr. Greebel, what  
15 information is in his head directly related to this exhibit.

16 I just want to know from Your Honor with guidance  
17 that I can do that. Because if I can't do that, Your Honor,  
18 then we are going to be prevented from, first, I believe that  
19 it is -- I should be able to get it in on the cross of the  
20 agent, I do believe it completes -- it directly ties to this  
21 email, Your Honor, respectfully. I don't think I need -- I  
22 don't need the agent to interpret the document. I don't need  
23 the agent to describe it, I don't need the agent for that. I  
24 think the timing and Your Honor review of the document alone  
25 is enough. It doesn't matter about the truth of the document.

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1 In other words, it doesn't matter if those transfers occur or  
2 not. The reason we're putting it in is to explain what  
3 Mr. Greebel -- information he received at the time that he  
4 gave his legal advice in that Government Exhibit and given the  
5 timing, that is the information he received and that is what  
6 he was responding to. He was not receiving the November 29th  
7 email four or five days later and giving that advice on  
8 November 26th and -- November 25th and November 26th directly  
9 relates to that email.

10 So, Your Honor, it's relevant, it passes 403. It's  
11 not hearsay because we're absolutely not offering  
12 Mr. Shkreli's email for the truth of what he said and we could  
13 not offer it through Ms. Hassan or Mr. Bertolini or  
14 Mr. Saunders because it is forwarded. He sends that email to  
15 them and then he forwards it to Mr. Shkreli and Mr. Shkreli is  
16 totally unavailable to us, obviously. We've conferred with  
17 Mr. Brafman and Mr. Brafman had told us prior to trial that  
18 Mr. Shkreli would not take the stand and he would take the  
19 Fifth Amendment, so he's unavailable to us. And the only way  
20 to get this document into evidence is to authenticate it and  
21 to fit -- make sure it's relevant under 403, argue about  
22 whether it's 403 unduly prejudicial and then look at the  
23 hearsay rule. And the hearsay rules, Your Honor, there is an  
24 exception to the hearsay rule that if it goes to a state of  
25 mind then it is admissible. And this is admissible because it



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1 does go to Mr. Greebel's state of mind.

2 We're just looking for guidance, Your Honor, that  
3 you will allow us, if we put on a case in chief, to put  
4 evidence in the record going to Mr. Greebel's state of mind.  
5 Because if not, Your Honor, with all respect -- with all  
6 respect, Your Honor, there are numerous emails where  
7 information is being received by Mr. Greebel, information just  
8 being received by him that's relevant to the advice he gives  
9 and if the jury can't see that but all they see is what the  
10 government selected, well, then they don't have a complete  
11 story. They have a misleading story. And I believe they have  
12 a misleading story with respect to the two exhibits that I  
13 pointed out to Your Honor that are in evidence and I think  
14 without that document, that missing document the government is  
15 being told -- the government is telling a misleading story  
16 and, respectfully, Your Honor, I think it's for that reason  
17 it's exculpatory.

18 MR. PITLUCK: Your Honor, I'm not even going to  
19 address another exculpatory comment. The point is, Your Honor  
20 is correct, they could have shown this document to Ms. Hassan  
21 and then we would have had a 106 on argument on Mr. Greebel's  
22 complete intentions; they chose not. The unavailability of  
23 Mr. Shkreli is utterly irrelevant.

24 The point is, Judge, is that they are trying, as  
25 we've said before, to put in their case. Mr. Brodsky just

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1 said, if we call a paralegal, fine, call a paralegal we'll  
2 have the argument then, but it's our position that this is not  
3 the basis for -- proper basis for cross-examination of Special  
4 Agent Delzotto, which they're clearly trying to do to advance  
5 their case to try to show the government's weak somehow and  
6 that's not the proper basis of cross-examination. It's got to  
7 be relevant to the scope of direct or on credibility and this  
8 is neither. And, Your Honor, the state of mind exception,  
9 which we can get to later, what I'm hearing is that everything  
10 email that Mr. Greebel receives is relevant to his state of  
11 mind. And I looked through the case law, I did not see  
12 anything that comes remotely close to that point, that would  
13 totally eviscerate the hearsay exception. It's not a fight to  
14 have now because we obviously want to start with the jury, but  
15 we're looking for some guidance as to how Special Agent  
16 Delzotto's cross-examination should be appropriately  
17 completed.

18 THE COURT: Well, you all know that the scope of the  
19 cross is defined somewhat by the scope of the direct and the  
20 idea of cross is to call into question the witness'  
21 credibility, reliability as a reporter or witness, whether the  
22 witness has bias or can be impeached, these are the kinds of  
23 bases that one would be able to confront a witness on  
24 cross-examination. But my concern is that you have asked me  
25 to open a conduit to put in evidence through your cross of

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1 this witness without really establishing an evidentiary ground  
2 for admissibility. Yes, it may be relevant, that doesn't make  
3 it admissible, right? It has to be relevant to be admissible.  
4 Simply because it's relevant doesn't mean it is admissible.

5 MR. BRODSKY: I agree, Your Honor. If this document  
6 was dated in 2013, if it was dated in 2014 I wouldn't be  
7 asking Your Honor to put it into evidence through Special  
8 Agent Delzotto.

9 The scope of a cross-examination is not limited to  
10 credibility and it's not limited to bias. It is limited to  
11 the scope of his direct, and bias and so forth. His direct  
12 tied the two emails together which I pointed out this morning,  
13 they did. They showed one email on the questions of cancel or  
14 surrender Mr. Greebel's advice and then on November 29th, and  
15 they had the special agent read it. It was unquestionable  
16 that they were tying the two together. And if memory serves  
17 me correctly they put them on the board. And, Your Honor --

18 MR. PITLUCK: That's not accurate.

19 THE COURT: Well, even if they did, it's their  
20 case --

21 MR. BRODSKY: I agree.

22 THE COURT: -- they are entitled to present their  
23 evidence in the way that they want --

24 MR. BRODSKY: Agreed.

25 THE COURT: -- provided it's admissible --

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1 MR. BRODSKY: Agreed.

2 THE COURT: -- and make whatever arguments.

3 MR. BRODSKY: Your Honor, part of our  
4 cross-examination of the special agent that has to be  
5 permitted, in my view, is that they are painting a picture  
6 through the special agent of a complete story. That these  
7 emails tell a complete story and if I have an email that is  
8 directly on point, directly on point -- I'm not asking for an  
9 email that's on different day at a different time, this is an  
10 email that's directly on point at the same time relating to  
11 the same piece of advice, it is for completeness. It directly  
12 goes to his statements about the email which he read into  
13 evidence. I'm not going to ask him to interpret it. I'm  
14 asking to offer it.

15 So it's state of mind, it goes to the government  
16 multiple times yesterday said it goes to the effect on the  
17 listener, they used that exception. This is the effect on  
18 Mr. Greebel as he's giving the advice in the same government  
19 exhibit and that's why I offer it, Your Honor, through this  
20 witness. I'm not going to be here for hours, Your Honor, I'm  
21 not. I had two binders, I cut it down to one last night. I  
22 don't have -- I'm not going to try to put in dozens and dozens  
23 of exhibits through -- given Your Honor's guidance yesterday  
24 with respect to the scope of the cross-examination, I severely  
25 reduced it. I expect to try to finish with him by lunch and

## PROCEEDINGS

1 tender him to back to the government, and that's what I'm  
2 going to try to do. I always -- I know I've made some  
3 predictions before, Your Honor, I have been wrong on my time  
4 but that's my goal and I've cut down my materials for that  
5 purpose.

6 And the reality is, Your Honor, we're not going to  
7 say to you, Your Honor, in our case in chief, if we put one  
8 on, that every document that Mr. Greebel receives is relevant  
9 to his state of mind. We'd be putting in thousands. What  
10 we're going to do is show you, Your Honor -- and we'll do it  
11 before we ever put on a witness, a paralegal, or our case  
12 agent to -- before we ever do that we would show Your Honor  
13 the emails to get rulings on it to tie the emails --

14 THE COURT: When do you propose to do this at  
15 sidebar after sidebar?

16 MR. BRODSKY: No, what we would do is, Your Honor --

17 THE COURT: You want me to just stay up all night  
18 making rulings on the documents.

19 MR. BRODSKY: No, absolutely not.

20 THE COURT: When do you propose to do this?

21 MR. BRODSKY: We have to make a decision which we  
22 will make immediately after we're done with the case agent  
23 with our client as to whether we're putting on a case in  
24 chief. And then once we decide --

25 THE COURT: How many documents are you expecting me

## PROCEEDINGS

1 to review between the time the government rests and the time  
2 you decide whether or not to put on a case?

3 MR. BRODSKY: I don't think there will be many that  
4 will be at issue, Your Honor, I don't. But I would like Your  
5 Honor's -- a little guidance from Your Honor.

6 THE COURT: I would say generally don't expect to  
7 put in documents simply because you think they are relevant to  
8 Mr. Greebel's state of mind. You need to have a clear  
9 evidentiary basis to offer a document.

10 This one that you offer, Defense Exhibit 124-61, I  
11 think is -- I guess given the timing and the way that the  
12 emails in Government Exhibit 459 are intersecting with the  
13 transmission by Mr. Shkreli to Mr. Greebel of Defense  
14 Exhibit 124-61 I would say that a stronger case could be made  
15 for admitting this one because I think that they're talking  
16 about undoing share transfers and Mr. Shkreli is forwarding  
17 his email requests to a number of investors to surrender or  
18 give up their shares. So I may make an exception to this one,  
19 but you should not expect me to generally randomly allow you  
20 to put in any exhibit that you think reflects Mr. Greebel's  
21 state of mind.

22 MR. BRODSKY: We understand, Your Honor. We  
23 understand.

24 THE COURT: So I understand the government's  
25 objections to trying to put this in on cross. I do think that

## PROCEEDINGS

1 to the extent it intersects just by minutes with Government  
2 Exhibit 459 and touches on the same subject matter of either  
3 surrendering or giving up shares, that it is properly  
4 admissible in this one instance.

5 The emails in 459 is subject to interpretation.  
6 Mr. Shkreli talks about a surrender agreement for the  
7 Retrophin shares I have given out. Whether that means in the  
8 context of the sweetener that you allege happened with regard  
9 to investors or whether it relates to the Fearnow shares that  
10 he -- and other shares that he gave out to certain people like  
11 Marek Biestek is an open question. And then when Mr. Greebel  
12 asks what is a surrender agreement, what do you want to do, he  
13 says in the singular, cancel a specific transfer. A specific  
14 transfer I made. Not multiple transfers that I made to  
15 investors or multiple transfers I made to others. He says a  
16 specific transfer, singular, I made. And then Mr. Greebel  
17 uses the plural, hard to unwind stuff easier if they transfer  
18 it back. I don't know why Mr. Greebel uses the plural form  
19 when Mr. Shkreli is speaking about a specific transfer.

20 MR. BRODSKY: I would say, Your Honor -- I would say  
21 the specific transfer would be the same -- the same idea would  
22 apply. The government is saying there were multiple transfers  
23 made on November 29th and December 3rd, so the use of the  
24 specific transfer would be the same problem for both sides.  
25 My view is when Mr. Greebel responds "they" he had received

## PROCEEDINGS

1 already the email forwarded by Mr. Shkreli of the multiple  
2 investors.

3 Your Honor, one other thing -- I know you want to  
4 move on, Your Honor -- is that Mr. Dubin -- we have no  
5 application with respect to the three jurors, Mr. Dubin wanted  
6 to comment on it to Your Honor on the situation and then we  
7 can begin.

8 MR. DUBIN: It can wait, Your Honor. We can get  
9 started, we can do it at a break.

10 MR. BRODSKY: So we can get started. Sorry.

11 THE COURT: So there are no applications regarding  
12 excusing any jurors; is that correct?

13 MR. DUBIN: Correct.

14 THE COURT: All right. Then we will bring them in.  
15 Thank you.

16 MR. DUBIN: I can even leave it to the charge  
17 conference.

18 THE COURT: I beg your pardon?

19 MR. DUBIN: I'm sorry, I can even leave it to the  
20 charge conference.

21 THE COURT: Well, I don't like last minute  
22 surprises, you guys are full of them. So whatever you have to  
23 tell me, tell me now. I'm not criticizing you, Mr. Dubin.  
24 I'm just saying you all continue to file --

25 MR. DUBIN: I'll tell you at the break, I don't want



## PROCEEDINGS

1 to leave the jury waiting.

2 THE COURT: Fine.

3 MR. PITLUCK: Your Honor, obviously we respect the  
4 Court's ruling but our continued objection --

5 THE COURT: I'm going to be very mindful and you're  
6 going to continue to object --

7 MR. PITLUCK: Yes.

8 THE COURT: -- I respect your objections, I think  
9 you are correct for most part, Mr. Pitluck, in your objection,  
10 I do think that given the timing, the way these two emails  
11 intersect it would be appropriate for me to admit Defense  
12 Exhibit 124-61.

13 MR. PITLUCK: Absolutely, Judge, we understand. We  
14 wanted to preserve our objection generally.

15 THE COURT: Keep preserving it.

16 MR. PITLUCK: Okay. We will.

17 THE COURT: Mr. Brodsky, are you going to be using  
18 969 or 970, the SEC 10-Qs on cross? I just want to know if I  
19 can put them away.

20 MR. BRODSKY: Let me take a look at them, I don't  
21 know them by memory. No, Your Honor.

22 THE COURT: Okay.

23 (Jury enters courtroom.)

24 THE COURT: Good morning, members of the jury. All  
25 jurors are present. Please have a seat.

DELZOTTO - CROSS - BRODSKY

1           Agent Delzotto, you're still under oath and  
2           Mr. Brodsky may continue his cross-examination.

3           MR. BRODSKY: Thank you.

4           CROSS-EXAMINATION

5           BY MR. BRODSKY::

6           Q     Good morning.

7           A     Good morning, sir.

8           Q     We left off with Government Exhibit 459. Can we put that  
9           up on the screen, Mr. Carter. And, Mr. Carter, will you blow  
10          up the bottom of the email, please.

11          Special Agent, you remember being shown this  
12          document, correct?

13          A     Yes, I do recall.

14          Q     This is -- on the bottom of 459, Government Exhibit 459  
15          in evidence, Mr. Shkreli sending an email on November 25th,  
16          2012 at 10:35 p.m. to Mr. Greebel, subject, surrender  
17          agreement, right?

18          A     I do recall it, yes.

19          Q     And in that email Mr. Shkreli states, quote, can you  
20          prepare a surrender agreement for the Retrophin shares I have  
21          given out. Correct?

22          A     Yes, I see it.

23          Q     And then -- we'll go through to the rest of the email but  
24          you were also then shown after reading the email exchange --  
25          and can we put this up, Mr. Carter, Government Exhibit 111-15

DELZOTTO - CROSS - BRODSKY

1 in evidence, and blow up the top, Mr. Carter.

2 This is an email Government Exhibit 111-15 in  
3 evidence of Mr. Su, November 29th, 2012, 8:20 p.m., sending it  
4 to Mr. Greebel, Corey Massella and Ms. Chew, correct?

5 A What I recall about this email is this is related to the  
6 back-dated documents that were used to transfer shares.

7 MR. BRODSKY: Your Honor, move to strike. My  
8 question was a yes or no whether or not this is an email dated  
9 November 29th from Mr. Su to Mr. Greebel, Mr. Massella and  
10 Ms. Chew.

11 THE COURT: The application is granted. The  
12 response of the witness will be stricken from the record, and  
13 if you can answer the question yes or no, please do so.

14 MR. PITLUCK: Your Honor, we object. It was not a  
15 yes or no question, it was answer of --

16 THE COURT: I think he asked whether this email was  
17 addressed to three people.

18 MR. PITLUCK: And then he said "correct." I mean,  
19 just clearly it wasn't a yes or no question. We just wanted  
20 to note that for the record.

21 THE COURT: All right. I think to the extent  
22 Mr. Brodsky has clarified that he's seeking a yes or no  
23 answer, if you can answer the question that he posed yes or no  
24 please do so.

25 A I'm sorry, can you rephrase it or repeat it. I'm sorry.

DELZOTTO - CROSS - BRODSKY

1 Q Sure.

2 Special Agent Delzotto, yes or no, is this an email  
3 dated November 29th, 2012 at 8:20 p.m. from Mr. Su to  
4 Mr. Greebel, Mr. Massella and Ms. Chew?

5 A Yes, it is.

6 Q And keeping in mind that November -- the November 29th  
7 date, if we can go back to Government Exhibit 459 at the  
8 bottom that email, the one I just showed you from Mr. Jackson  
9 Su, is four days after this November 25th email, correct?

10 A Correct.

11 Q Now do you have in front of you Defense Exhibit 124-61 or  
12 do we have it put up the screen? Can we put it up on the  
13 screen, Mr. Carter, not to be published to the jury just on  
14 the witness screen.

15 MR. PITLUCK: Your Honor, I would ask -- it's a  
16 multiple page document --

17 MR. BRODSKY: Sure.

18 MR. PITLUCK: -- I ask the witness be given a copy.

19 THE COURT: Can you give him a hard copy, please.

20 MR. BRODSKY: Yes.

21 May I approach, Your Honor?

22 THE COURT: Showing the witness Defense Exhibit  
23 124-61.

24 MR. BRODSKY: For identification, yes, Your Honor.

25 THE COURT: All right.

DELZOTTO - CROSS - BRODSKY

1 THE WITNESS: Thank you.

2 MR. BRODSKY: Your Honor, pursuant to the prior  
3 discussion, we offer it into evidence.

4 THE COURT: All right. I will admit Defense  
5 Exhibit 124-61.

6 (Defendant Exhibit 124-61, was received in  
7 evidence.)

8 MR. PITLUCK: Your Honor, with the instructions.

9 THE COURT: Pardon me?

10 MR. PITLUCK: With the instruction we discussed.

11 THE COURT: All right. This document is admitted,  
12 but the jury is instructed that the email that appears on  
13 Defense Exhibit 124-61 from Martin Shkreli dated  
14 November 25th, 2012 is not being offered for its truth.

15 BY MR. BRODSKY::

16 Q Special Agent Delzotto, if you look at the bottom  
17 email -- can we blow up that bottom email just from, send, to,  
18 and can we put that next to Government Exhibit 459 in  
19 evidence. And blow up the bottom of Government Exhibit 459 in  
20 evidence, the last email in the chain. Can we scroll that  
21 over a little bit, Mr. Carter, so we can see the full -- on  
22 both of them the full email. Yes, that's perfect. Thank you.

23 So looking at the screen, you see, sir, that  
24 Government Exhibit 459 is at the bottom, correct?

25 A Correct.

DELZOTTO - CROSS - BRODSKY

1 Q And is that email from Mr. Shkreli, yes or no,  
2 November 25th, 2012 at 10:35 p.m. to Mr. Greebel, correct?

3 A It is, yes, that's correct.

4 Q And the email above it from Defense Exhibit 11 -- I'm  
5 sorry, Defense Exhibit 124-61 in evidence was sent by  
6 Mr. Shkreli to Robert Bertolini, correct?

7 A Yes, he's an associate of Mr. Saunders.

8 Q I'll ask you --

9 THE COURT: It's a response, I'm not going to strike  
10 that.

11 MR. BRODSKY: I understand, I'm fine with that  
12 response.

13 THE COURT: All right.

14 BY MR. BRODSKY::

15 Q And yes or no --

16 THE COURT: Do you want --

17 Q And, sir, Mr. Shkreli sent the email at the top  
18 November 25th, 2012 to the following people, yes or no.  
19 Robert Bertolini?

20 A Yes.

21 Q Tom Koestler?

22 A Yes, sir.

23 Q Brent Saunders?

24 A Yes, sir.

25 Q And Sarah Hassan?

DELZOTTO - CROSS - BRODSKY

1 A Yes, sir.

2 Q And that email that's sent by Mr. Shkreli in DX 124-61 is  
3 sent seven minutes before Mr. Shkreli's email to Mr. Greebel  
4 in Government Exhibit 459, right?

5 A It is, but I don't know if they're related or not. It  
6 is, yes.

7 Q It is, right?

8 A But I don't know if they're related. The subject titles  
9 are different, it's to different people.

10 Q Okay. And, Mr. Delzotto, Defense Exhibit -- can we blow  
11 up Defense Exhibit 124-61. And blow up the whole thing.

12 Sir, prior to the indictment did you have this  
13 email?

14 MR. PITLUCK: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q Prior to coming into the courtroom today, had you seen  
17 this email?

18 MR. PITLUCK: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q Prior to your testimony last week, had you seen the  
21 email?

22 MR. PITLUCK: Objection, Your Honor.

23 THE COURT: I'll allow it.

24 A Can I see the whole email?

25 Q Sure, it's right before you in the physical copy.

DELZOTTO - CROSS - BRODSKY

1 A Oh, I'm sorry.

2 Q Yes or know, sir?

3 A It's not a yes or no answer.

4 Q It's not a yes or no?

5 A No, it's not a yes or no.

6 Q All right. You agree though, sir, a yes or no, that that  
7 e-mail from Mr. Shkreli to Mr. Bertolini, Mr. Koestler, Mr.  
8 Saunders, Ms. Hassan is seven minutes before Mr. Shkreli sends  
9 that e-mail to Mr. Greebel in Government's Exhibit 459 in  
10 evidence, yes or no, sir?

11 A Is it seven minutes? It's seven minutes, yes.

12 Q And then if you stay with me, on Government's Exhibit  
13 459, one minute later, Mr. Greebel says to Mr. Shkreli, yes or  
14 no, sir, November 25, 2012, 10:36 p.m., quote, from  
15 Mr. Greebel, "What is a surrender agreement? What do you want  
16 to do?" That's what it says, right?

17 A That's what it says.

18 Q And then the next e-mail in the chain, Mr. Shkreli  
19 responds one minute later, what time is that, sir, what is the  
20 time stamp there?

21 A It says November 25, 2012, 10:36 p.m.

22 Q And Mr. Shkreli says to Mr. Greebel in that e-mail quote,  
23 "cancel a specific transfer I made," end quote, correct, yes  
24 or no?

25 A Yes, that's what it says.



DELZOTTO - CROSS - BRODSKY

1 Q And then if we can put up side by side Defendant's  
2 Exhibit 124-61, and tell me, yes or no, whether after  
3 Mr. Shkreli said on November 25, 2012, at 10:36 p.m. "cancel a  
4 specific trade I made."

5 THE COURT: Transfer.

6 Q "Transfer I made." Mr. Shkreli sent, forwarded to  
7 Mr. Greebel on November 25, 2012, 29 seconds later this e-mail  
8 in Defendant's Exhibit 124-61, yes or no?

9 A I could answer it yes or no, but I'd like to add.

10 Q It's just a yes or no, sir.

11 A But it's not because I don't know if they are related or  
12 not.

13 Q I'm not asking --

14 MR. BRODSKY: Move to strike.

15 THE COURT: He's just asking about the timing.

16 A The timing is November 25, 2012, 10:36:29, which the  
17 e-mail below doesn't have the millisecond, so I don't know if  
18 the top one came before or after the one below.

19 Q Okay. So, sir, you would agree, putting aside the  
20 milliseconds, right, according to these two documents  
21 Government's Exhibit 459, Mr. Shkreli sent an e-mail at  
22 10:36 p.m. stating cancel a specific trade I made; and in  
23 Defendant's Exhibit 124-61, at 10:36 p.m. sent, forwarded, to  
24 Mr. Greebel the e-mail we were looking at, Defendant's Exhibit  
25 124-61, yes or no?

DELZOTTO - CROSS - BRODSKY

1 MR. PITLUCK: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. PITLUCK: He said trade not transaction.

4 Q I said transfer. I apologize. You want me to restate  
5 the question?

6 A If you could.

7 Q Okay. Sir, the e-mail -- do Government's Exhibit 459,  
8 which Mr. Shkreli said sent at 10/25 at 10:36 p.m. the same  
9 time, correct, the same minute, 10:36, according to the time  
10 stamp on DX124-61 he forwarded that e-mail to Mr. Greebel, yes  
11 or no?

12 A Was it at the same time? No, it wasn't. Because one has  
13 10:36 and one is 10:36:29 milliseconds.

14 Q And one was 29 milliseconds later, correct?

15 A No, I can't say that, because the one on the bottom  
16 doesn't have the millisecond.

17 Q But they were both sent at 10:36. One was sent before  
18 the other you, would agree with that they weren't sent  
19 simultaneously?

20 A They weren't sent simultaneously. I don't know which one  
21 came first.

22 Q Without knowing which one came first, you know they were  
23 both sent by Mr. Shkreli to Mr. Greebel at 10:36, right?

24 A One was at 10:36 and one was at 10:36:29.

25 Q And would you read for us -- could we put up Defendant's

DELZOTTO - CROSS - BRODSKY

1 Exhibit 124-61 -- would you read the e-mail Mr. Shkreli  
2 forwarded to Mr. Greebel at 10:36:29 milliseconds at the  
3 bottom where Mr. Shkreli sent the e-mail, would you start with  
4 "hi" and read it into the record?

5 A Okay, but it's 10:28, not 10:36.

6 THE COURT: I think he just wants you to read it.

7 A "Hi. Retrophin is executing it's deal with Valeant and  
8 new investors. The new investors putting money into the  
9 company want the current preferred investors, the people on  
10 this e-mail, to be lumped into their class. I think it makes  
11 sense, the new preferred stock has very, very generous terms.  
12 Cash investors will receive 3.3 times their initial investment  
13 in a preferred A share. They will also receive a preferred B  
14 share, which will convert into a \$35 million premoney  
15 valuation."

16 Q Let me ask you to stop right there. Am I reading the  
17 next paragraph correctly, sir? "I am asking you to give up  
18 your common stock, which was previously inducement to invest  
19 in the series A preferred stock. The new preferred stock is a  
20 much more, quote, "institutional quality," replacement for the  
21 bandaids common stock I gave out. I hope you all agree to do  
22 this. I believe it is in all of our respective best  
23 interests," end quote. Is that how the second paragraph  
24 reads?

25 A That's how it reads, yes.

DELZOTTO - CROSS - BRODSKY

1 Q And then it goes to say, quote, "I have attached the  
2 latest term sheet. We are proceeding with the Valeant deal  
3 but paying them a lot less up front than we had envisioned.  
4 Instead of \$28 million up front, we are going with ten to  
5 \$16 million up front. This should end the uncertainty and  
6 difficulty with Valeant. I hope this situation has not put  
7 anyone in an uncomfortable position," period, end quote.  
8 That's the third paragraph how it reads, correct?

9 A Correct.

10 Q And then turning to Government's Exhibit 459 in evidence.  
11 Am I reading Mr. Greebel's response on November 25, 2012, at  
12 10:37 p.m. correctly, to Mr. Shkreli, quote, "hard to unwind  
13 stuff, easier if they transfer back," end quote, did I read  
14 that correctly?

15 A Did you read it correctly? Yes. But it's not related to  
16 the former e-mail.

17 MR. BRODSKY: Move to strike, your Honor.

18 THE COURT: Sir, just answer yes or no.

19 MR. BRODSKY: I'd like the answer stricken, his last  
20 statement, your Honor.

21 THE COURT: Sir, I'm going to strike the additional  
22 statement you made about whether or not it's related. Just  
23 answer yes or no when he asks you on cross-examination to do  
24 so.

25 THE WITNESS: Okay.

DELZOTTO - CROSS - BRODSKY

1 THE COURT: Thank you.

2 BY MR. BRODSKY::

3 Q Mr. Shkreli, am I reading his response correctly on  
4 November 26, 2012, quote, "okay, that works," end quote?

5 A That is what he writes in this e-mail, yes.

6 Q Now, you were shown, sir, Government's Exhibit 674 in  
7 evidence. Can we put that up, please?

8 At the top of the e-mail does it read, September 24,  
9 2014, from Mr. Greebel to Mr. Shkreli subject Re: Board books  
10 from previous meetings. I am in the process of sending it to  
11 her and will have it completed today," end quote. Is that  
12 what it reads, sir, yes or no?

13 A That is what it reads, yes.

14 Q And then -- by the way, sir, during the two days roughly  
15 of your testimony on direct examination, you read emails and  
16 documents into the record, correct?

17 A I did.

18 Q And not a single time, not once ever, during your direct  
19 examination did you ever interpret an e-mail, correct?

20 A Interpret an e-mail? What do you mean?

21 Q Not once did you say this document relates to this  
22 document, or this document is unrelated to this document, or  
23 this document has nothing to do with this document, not a  
24 single time, sir, yes or no?

25 A I --

DELZOTTO - CROSS - BRODSKY

1 Q The jury heard your testimony. Yes or no?

2 A I don't recall. I may have; I may not have.

3 Q You don't remember your testimony from last week and  
4 yesterday?

5 A We went through hundreds of documents. I don't remember  
6 everything that I said, no.

7 Q Was there a single instance in response to a question  
8 from the Government, a single time, you ever volunteered  
9 information that wasn't asked of you?

10 MR. PITLUCK: Objection, your Honor.

11 THE COURT: Sustained.

12 Q Let me ask you, sir, you were shown Government's Exhibit  
13 286 in evidence, and this was on the same date, correct, as  
14 the last e-mail, Government's Exhibit 674 in evidence?

15 A Can I see the previous e-mail again?

16 Q Sure.

17 A Yes, sir, it was the same day.

18 Q And Mr. Greebel, am I reading this correctly, sends to  
19 Ms. Valeur-Jensen "subject 2014 minutes (through May),"  
20 correct?

21 A Correct.

22 Q And says, quote, "Hi Meg, here are the 2014 minutes from  
23 January through April. I have not received the minutes from  
24 May through the summer yet from my files department and will  
25 send next week when I return. As I assume they will arrive

DELZOTTO - CROSS - BRODSKY

1 before I'm back in the office," end quote, do you see that?

2 A Do I see it? Yes, I see it.

3 Q It attaches, if you turn to the first page of the  
4 attachment, it attaches minutes of a special meeting of the  
5 Board of Directors of Retrophin Inc. January 6, 2014, yes or  
6 no?

7 A Can I see all of it?

8 Q Yes. Let me show you a hard copy?

9 MR. BRODSKY: May I approach, your Honor?

10 THE COURT: Yes.

11 Q If you turn to Bates R02379, do you see minutes of the  
12 special meeting of the Board of Directors of Retrophin Inc.  
13 dated January 6, 2014?

14 A I see minutes for this one month, yes.

15 Q And you see the redactions there were on there before --  
16 withdrawn. Retrophin produced the document with redactions,  
17 correct?

18 MR. PITLUCK: Objection, your Honor.

19 THE COURT: Overruled.

20 A I'm sorry?

21 Q You didn't redact this document, correct?

22 A Did I redact it? No, I did not.

23 MR. PITLUCK: Objection. Your Honor, we need a  
24 sidebar. We object. We need a sidebar.

25 (Continued on the next page.)

DELZOTTO - CROSS - BRODSKY

(Sidebar conference.)

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## SIDEBAR CONFERENCE

1 MS. SMITH: Your Honor, this is has come up more  
2 than once in this trial. It came up I believe in connection  
3 with Mr. Jain at one point where the witness was shown a  
4 redacted document and asked when the redactions were made, who  
5 made them. As we submitted in our jury instructions,  
6 redactions are made depending on various evidentiary issues in  
7 this case. There may be Retrophin asserted privilege. And  
8 we're not supposed to ask the jury to speculate why the  
9 redactions are there or what is underneath the redactions.

10 If we start to distinguish these redactions were  
11 made because the company wanted them for some reason or these  
12 redactions were made because defense didn't like what was  
13 underneath the redactions, this focus on why the redactions  
14 are there and what the jury should infer from them I think is  
15 highly inappropriate.

16 MR. BRODSKY: Your Honor, what I'm trying to do is  
17 I'm very concerned that there are minutes that have  
18 redactions. The minutes are very important to us. And we are  
19 going to be pointing to the minutes as part of our proof. I  
20 want to make it very clear that we didn't redact this. I want  
21 to make it clear that he didn't redact it. It is important to  
22 us when it comes to the minutes, other documents I don't care,  
23 but it's important to us to be able to argue to the jury for  
24 not the jury to get the impression that we are concerned by  
25 something in the minutes because we don't want --

## SIDEBAR CONFERENCE

1 THE COURT: What if I give the instruction to the  
2 jury that these documents were redacted by Retrophin and they  
3 should not speculate as to why.

4 MS. SMITH: I think --

5 MR. BRODSKY: Fine.

6 MS. SMITH: They were redacted. You shouldn't  
7 speculate why or who redacted isn't important. Unless we  
8 explain the attorney-client privilege. The impression is  
9 Retrophin did something inappropriate. It's inappropriate  
10 through the witness, that is why we have jury instructions on  
11 redactions. And so it's, just again, we objected the last  
12 time. This is the second time defense has tried to suggest  
13 that Retrophin is doing something improper. If we suggest  
14 that the Retrophin made the redactions, we can say because  
15 it's privilege or unrelated.

16 THE COURT: It might be a trade secret, a lot of  
17 different things.

18 MS. SMITH: Defense counsel had the opportunity to  
19 challenge redactions where they wanted to. I don't know if  
20 they challenged redactions in a particular case. The  
21 Government, as long as the redactions don't have to do with  
22 information relevant to the case, I agree, trade secrets,  
23 other transactions that are still privileged.

24 THE COURT: It could be personal issues. It could  
25 be a lot of personnel issues.

## SIDEBAR CONFERENCE

1 MS. SMITH: If you want to give a fulsome discussion  
2 to all of the reasons why Retrophin might have redacted it,  
3 that's fine. More appropriate would be to say this document,  
4 like other documents you will see in the case, has redactions.  
5 You shouldn't speculate as to why, one way or the other.

6 THE COURT: Who did them.

7 MS. SMITH: Sometimes it's the defense, sometimes  
8 the Government, sometimes the Court.

9 THE COURT: We did redact a number of documents  
10 yesterday. We took things out, we took out sentences or parts  
11 of paragraphs or whatever. So I don't think we need to get  
12 into that, we shouldn't. We should treat all of redactions  
13 equal. Just say they were redacted, they shouldn't speculate  
14 why.

15 MR. BRODSKY: I respectfully ask your Honor to  
16 reconsider. I'll explain why. It's perfectly fine if you say  
17 something is redacted over our objection. I think it's  
18 obvious to jury with the objection, something gets redacted.  
19 I think the jury is a smart jury they know something is  
20 redacted because defense objected.

21 Excuse me, Ms. Smith. Let me finish. Thank you.

22 I think it's perfectly appropriate. I think it's  
23 perfectly appropriate. What concerns us in the Board minutes,  
24 we want the jury -- we'll call somebody if we have to, if we  
25 put on a case in chief -- we want the jury to know Retrophin

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1 redacted it. It wasn't the Government because they had  
2 concerns about something in the document. And it wasn't the  
3 defense because we had concerns about something in the  
4 document. It was Retrophin. And they did it for their own  
5 reasons.

6 I'm fine with your Honor instructing them that  
7 Retrophin redacted for its own reasons, which no party is  
8 disputing. That's fine with us. If you want to add to it  
9 it's privileged or trade secret.

10 THE COURT: No. I don't know why they redacted, I  
11 couldn't say it. I'm saying to all of you there are a number  
12 of reasons why Retrophin made the redactions.

13 MS. SMITH: My concern what is Mr. Brodsky is going  
14 to argue from that in closing if, what he's going to argue is  
15 they should think about why Retrophin redacted what is  
16 underneath or what might be there. That's entirely  
17 inappropriate. That's the whole purpose of the jury  
18 instruction.

19 I was not suggesting that we should ever say X party  
20 redacted this, that is suggesting to the jury what is  
21 underneath that, why does this party want it and not this  
22 party. All redactions should be treated the same.

23 I would like to hear why Mr. Brodsky thinks it's  
24 important for his summation to say that Retrophin redacted the  
25 document. Because you have to, there has to be some relevant

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1 reason that that would be important. I agree, if that's the  
2 case, then he should call someone from Retrophin and that  
3 person can talk about all the reasons why redactions were  
4 made. I think it's a side show, but I haven't heard a  
5 relevant argument.

6 MR. BRODSKY: Putting aside summation. I know both  
7 sides have said we don't know what we're going to be saying at  
8 summation at this point.

9 MS. SMITH: That's the point.

10 MR. BRODSKY: I think the point for us is  
11 Mr. Greebel signed these minutes. He's the signature on them.  
12 And it is important for us to get a cross to the jury, since  
13 he signed them, and the jury sees that, that he did not redact  
14 those and we did not ask for redactions in them.

15 THE COURT: The agent can't testify as to whether  
16 Mr. Greebel redacted, I think.

17 MR. BRODSKY: He knows he received them in discovery  
18 redacted. He knows this because he recognized the document.  
19 It was admitted into evidence through him. He knows it's the  
20 Bates stamp. And the foundation for it is that he was  
21 familiar with the documents. He knows it came from Retrophin;  
22 therefore, he knows when he got the document from Retrophin it  
23 was redacted.

24 But I'm fine -- your Honor, I think it's perfectly  
25 permissible to question a witness about redactions in a

## SIDEBAR CONFERENCE

1 document that he offered into evidence. But your Honor, I'm  
2 fine with you instructing the jury. But it is important to us  
3 that Retrophin did it. And it is important to us because it  
4 wasn't Mr. Greebel's decision to redact things. And that is  
5 important to us because he signed them.

6 The inference we're worried about is that a juror  
7 might draw an inference back in the jury room, you know what,  
8 why did Mr. Greebel sign those? Did he send them all blacked  
9 out?

10 MS. SMITH: There is an instruction.

11 THE COURT: I will say they are not to speculate as  
12 to who or why redactions were made. They shouldn't speculate  
13 about what was redacted. Those are the three things: The  
14 who, why and what.

15 MS. SMITH: I would also say the minutes were not  
16 offered for the truth. So to the extent that Mr. Brodsky will  
17 argue certain things in there, obviously statements of the  
18 defendant, but that somehow -- it's very strange. There are  
19 e-mails that Mr. Greebel is on. I don't think anyone is  
20 suggesting that the e-mails are redacted.

21 MR. BRODSKY: Your Honor, it is important to us.  
22 We're requesting it.

23 THE COURT: Why is it important? Why don't you tell  
24 me why it's important. Then I have to go through each  
25 document where there's a redaction and explain. I'm not going

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1 to treat the Retrophin documents any differently than I will  
2 any other documents. Tell me why it's important. And now, if  
3 I do agree with the request, I'm going to do it with all  
4 documents. Tell me why.

5 MR. BRODSKY: The Board minutes, your Honor, given  
6 that Mr. Greebel signed them, we are concerned. I understand  
7 you're going to instruct the jury not to speculate. I  
8 understand that, your Honor, but we know the jurors are  
9 allowed to draw their own inferences from the evidence. They  
10 are instructed about that. Knowing human behavior, we are  
11 concerned, really concerned, that because he signed them.

12 If you don't instruct the jury that Retrophin  
13 redacted them, then somebody on the jury will think, even for  
14 a moment, oh, Mr. Greebel was hiding something when he sent  
15 them the minutes to Meg Valeur-Jensen. They were not redacted  
16 when he sent them to Meg Valeur-Jensen. They were unredacted.  
17 And I don't want the jury to think on September 24 when he  
18 sent those Board minutes to Ms. Jensen, he hid stuff. While  
19 case is about concealment, hiding things, and constantly  
20 saying that; here it is, Mr. Greebel's e-mail he's attaching  
21 the minutes that they redacted.

22 I am deeply worried that somebody in the jury will  
23 think, oh, Mr. Greebel hid stuff. That is my, that's why it's  
24 important to me that you tell them that Retrophin did it. If  
25 you say you're not to draw an inference from it, the jury will

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1 not know that it was Retrophin who did it and the wasn't  
2 redacted on September 246.

3 MS. SMITH: Your Honor, the instruction that we ask  
4 for is very simple. It says, among the exhibits you receive  
5 in evidence there are some documents that are redacted.  
6 Redacted means that part of document was taken out. You're to  
7 concern yourself only with the part of the document that is  
8 admitted into evidence. You should not consider any possible  
9 reason why the other part of it had been redacted. It's an  
10 instruction that Judge Wood gave in the Southern District  
11 recently. I believe it's a Sand instruction as well.

12 Mr. Brodsky is suggesting that for some reason the  
13 jurors are not going to follow this instruction but they will  
14 follow all the other ones. This is very straightforward.

15 I don't know why we've drawn undue attention to  
16 these redactions, suggesting that these are different than  
17 other redactions. In this case you have information about who  
18 redacted, but you shouldn't speculate why it was redacted. As  
19 in other cases you're not given information about who is  
20 redacted.

21 Asking this witness about the redactions suggests  
22 that these redactions should be treated differently. I don't  
23 understand. Again, the suggestion is that the jurors cannot  
24 follow instructions and would draw some inference from this  
25 particular document.



## SIDEBAR CONFERENCE

1           There are e-mails from Mr. Shkreli and Mr. Greebel  
2       where there are redactions for privilege, where Retrophin has  
3       not waived on certain transactions. I don't hear Mr. Brodsky  
4       wanting those to be singled out like Mr. Shkreli and  
5       Mr. Greebel are trying to hide something.

6           I think this particular focus is inappropriate. I  
7       think this instruction will cover all redactions, and we can  
8       give it now.

9           But I don't think he should be able to question this  
10      witness about it. I don't think it's appropriate. It is  
11      asking them to speculate.

12          MR. BRODSKY: Your Honor, I don't want any  
13      speculation about why they did it. But this is different than  
14      all other documents.

15          THE COURT: It's not different.

16          MR. BRODSKY: May I at least, your Honor, or can you  
17      instruct them that with the Board minutes that on September 24  
18      when Mr. Greebel sent it they weren't redacted. Again, my  
19      concern, your Honor, unlike e-mails coming into evidence, it's  
20      obvious something was written they are redacted over it. Here  
21      you have a cover e-mail that then attaches Board minutes. And  
22      Mr. Greebel, they are arguing, is delaying in sending them.  
23      So think about that. They argue that delay. Then on  
24      September 24 he attaches Board minutes, which are redacted.  
25      Then they argue, and then somebody draws an inference, oh, he

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1 hid stuff. That's my concern.

2 THE COURT: Can I instruct them that Mr. Greebel did  
3 not make these redactions and leave it at that?

4 MS. SMITH: That's fine. But there are other  
5 documents. For example, the bills when Mr. Greebel sent the  
6 bills, the cover e-mail has no redactions and the bills are  
7 redacted.

8 MR. KESSLER: The defense request --

9 MR. PITLUCK: Any specific direction on who did or  
10 didn't make the redactions is totally inappropriate. It runs  
11 contrary to the instruction you're giving them, which is to  
12 say, you're not consider the redaction.

13 THE COURT: Who or why.

14 MS. SMITH: You can say neither party requested the  
15 redactions.

16 THE COURT: Neither party.

17 MR. BRODSKY: Can you just say it wasn't redacted at  
18 the time it was sent?

19 THE COURT: I don't know that I'm not going to say  
20 that. I'm going to say -- I don't know that.

21 MR. BRODSKY: We're going to have to call a witness.

22 THE COURT: I don't know what Katten did, and what  
23 it looked like when it was sent. I don't know. I don't know  
24 whether at what point the redactions were made -- I'm going to  
25 say that these, they should not speculate about what was

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1 redacted or why, neither party made the redactions. That's  
2 all I am going to say.

3 (End of sidebar conference.)

4 (Continued on the next page.)  
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DELZOTTO - CROSS - MR. BRODSKY

1 (In open court.)

2 THE COURT: I'm instructing the jury that you may  
3 see documents in this trial that have redactions, i.e.,  
4 portions are blacked out. You should not speculate as to why  
5 those redactions were made or speculate about what was  
6 underneath those redactions. In this case with regard to  
7 Government's Exhibit 286, the redactions were not made by  
8 either party in this case.

9 You may continue.

10 MR. BRODSKY: Thank you, your Honor.

11 BY MR. BRODSKY::

12 Q Just reorienting ourselves. The top is the minutes for a  
13 special meeting of the Board of Directors of Retrophin Inc.  
14 January 6, 2014, correct?

15 A Correct, sir.

16 Q Then if you scroll over on R024386 you see a signature  
17 above Evan Greebel, Acting Secretary, correct?

18 A I see a signature, yes.

19 Q And then if I can ask you to scroll a few more pages to  
20 R024393, this is entitled minutes of a special meeting of the  
21 Board of Directors of Retrophin Inc. March 17, 2014, correct?

22 A Yes, correct.

23 Q And then a few pages later, R024395, there is a name Evan  
24 Greebel, Acting Secretary, and above that a signature,  
25 correct?

DELZOTTO - CROSS - MR. BRODSKY

1 A Correct, sir.

2 Q And then on the next page, R024396, it's entitled minutes  
3 of a special meeting of the Board of Directors of Retrophin  
4 Inc. March 20, 2014, correct?

5 A Yes.

6 Q Then if you scroll a few more pages you see on R024402,  
7 above the name Evan Greebel, Acting Secretary, a signature,  
8 correct?

9 A Yes, I see it.

10 Q Then the next page it says minutes of a special meeting  
11 of the Board of Directors of Retrophin Inc. April 7, 2014, and  
12 that's on R024403, correct?

13 A Yes, I see it.

14 Q Then if you scroll over a few more pages on R02447 you  
15 see a signature above Evan Greebel, Acting Secretary, right?

16 A Yes, I see it.

17 Q Then the next page you see minutes of a special meeting  
18 of the Nominating and Corporate Governance Committee of the  
19 Board of Directors of Retrophin Inc. March 20, 2014, right?

20 A I do see it, yes.

21 Q R024408?

22 A Correct.

23 Q Then the next page, on R02449, there is a signature above  
24 Evan Greebel, Acting Secretary, correct?

25 A Correct.

DELZOTTO - CROSS - MR. BRODSKY

1 Q And then the next page is R024410, it says minutes of a  
2 special meeting of the Audit Committee of the Board of  
3 Directors of Retrophin Inc. March 20, 2014, correct?

4 A Yes, I see that.

5 Q Let me show you a particular document.

6 MR. BRODSKY: May I approach, your Honor?

7 THE COURT: Yes.

8 Q I'm showing you Defendant's Exhibit 10868A for  
9 identification. Sir, this document is dated May 9, 2014,  
10 correct?

11 A Correct, this e-mail is dated May 9, 2014.

12 Q And if I can ask you to, without, you don't have to  
13 publish, Mr. Carter, but you have a physical copy of both  
14 documents in front of you, sir?

15 A I have a physical copy of both documents you're showing  
16 me, yes.

17 Q If you turn to Government's Exhibit 286 in evidence, and  
18 you turn to R024393, the one that has the minutes of the  
19 special of the Board of Directors of Retrophin on March 17,  
20 2014, do you see that?

21 A Yes, I see it.

22 Q And if you turn to the third page, first attachment of  
23 the May 9, 2014 e-mail?

24 THE COURT: I'm sorry.

25 MR. PITLUCK: We're objecting to having him compare

DELZOTTO - CROSS - MR. BRODSKY

1 a document that's not in evidence to a document that is in  
2 evidence.

3 MR. BRODSKY: I'm trying to lay a foundation, your  
4 Honor.

5 THE COURT: You're having him look at so far  
6 Government's Exhibit 286 in evidence; is that right?

7 MR. BRODSKY: Yes, 286 in evidence. And to lay the  
8 foundation compare it to DX-10868A, May 9, 2014.

9 THE COURT: Are you going to move this exhibit into  
10 evidence?

11 MR. BRODSKY: If can I lay a proper foundation.

12 MR. PITLUCK: Your Honor, we object.

13 THE COURT: All right. Why don't you first see if  
14 it you can establish admissibility. You're going to try to  
15 lay a foundation for DX-10868A, correct?

16 MR. BRODSKY: Yes, your Honor. I'm trying to do  
17 that with this.

18 BY MR. BRODSKY::

19 Q Sir, the first attachment on DX-10868A which is Bates  
20 numbered on the bottom R024317, are you with me?

21 A Yes.

22 Q If you look at that, those three pages from R024317 to  
23 R024319, and you compare them to Government's Exhibit 286 in  
24 evidence R024393 through R04395, isn't it true that they  
25 relate to the same meeting, one is signed and one is not

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1 signed, correct?

2 MR. PITLUCK: Your Honor, we object. Can we have a  
3 sidebar?

4 THE COURT: Yes.

5 (Continued on the next page.)

6 (Sidebar conference.)

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## SIDEBAR CONFERENCE.

1 MR. PITLUCK: Your Honor, apologize for the other  
2 sidebar so soon. It's clear what is going on and I want to  
3 prevent this before it's in the record. Defense counsel is  
4 reading all of the Board minutes, having the agent compare the  
5 same minutes, which were sent in draft form to Mr. Panoff on  
6 May 9, 2014. We had a lengthy sidebar yesterday regarding  
7 Ms. Jensen. They are trying to put in a case of an unrelated  
8 issue that Mr. Kravitz at Katten sent draft Board minutes to  
9 Panoff, the CFO, to establish a point that because we just  
10 established that he sent them to the Board in September that  
11 he's now saying he sent it in May. It's totally unrelated.  
12 This is not proper cross-examination. There is no connection.

13 Your Honor ruled on the previous document, and that  
14 it was in seconds. This is six months in advance. There is  
15 no indication that this was ever sent to the Board. It's an  
16 unrelated point. And assuming they can get this in for the  
17 truth of the matter, it was sent to Mr. Panoff. It's  
18 unrelated to the fact that it was sent to the Board.

19 We don't want him to read every document and say  
20 these are the same. It's leaving the jury with the impression  
21 that the case agent -- that the documents are related when  
22 they are not. This is four-and-a-half months before.

23 MR. KESSLER: It's not cross. It's their case on  
24 our agent.

25 MR. PITLUCK: He didn't say they weren't sent to

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1 somebody else.

2 THE COURT: Well, the set that is in evidence that  
3 was sent by Mr. Greebel to Ms. Valeur-Jensen, these are sent  
4 by Mr. Kravitz unassigned to Mr. Panoff.

5 MR. PITLUCK: Yes.

6 THE COURT: Mr. Greebel sent those minutes in  
7 response to Ms. Valeur-Jensen's request.

8 MR. PITLUCK: Right.

9 THE COURT: These were sent, I don't know whether  
10 there was an outstanding request, or whether this was just  
11 done in the normal course.

12 MR. PITLUCK: Your Honor, our point is not -- it's  
13 simply. This is totally unrelated to the scope of the  
14 testimony. We didn't argue that they were sent to anybody  
15 else.

16 THE COURT: I think the appropriate point, if I  
17 recall reading the defendant's proposed experts, if they do  
18 put on a case one of those experts will testify that it is not  
19 uncommon for Board minutes to be sent to an officer, CFO I  
20 think.

21 MR. KESSLER: I think they withdrew that opinion.  
22 Mr. Ferruolo's revised opinion, I believe, they are not longer  
23 offering those governance points.

24 MR. BRODSKY: May I respond to Mr. Pitluck, briefly?  
25 In terms of the relationship between the two documents, they

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1 are directly related. Because I will establish through this  
2 witness by the way the DX-10868A, which is a May 19 e-mail  
3 from Mr. Kravitz to Marc Panoff copying Mr. Greebel in the  
4 record already, is that Mr. Kravitz is an associate and  
5 working for Mr. Greebel on Retrophin matters. And he is  
6 sending the Board minutes of four dates. They are drafts. He  
7 says they are draft minutes. And they match the minutes that  
8 are attached to Government's Exhibit 286 in all of these four  
9 dates.

10 Prior to putting in Evan Greebel's e-mail to Meg  
11 Valeur-Jensen, who was acting outside counsel to or acting  
12 counsel to in some capacity in-house to Retrophin, the  
13 Government put in Government's Exhibit 674 directly before.  
14 We had objected on the double hearsay grounds. But the idea  
15 was that Mr. Aselage, who was Chief Operating Officer, it was  
16 not coming from the Board, it was coming from the Chief  
17 Operating Officer.

18 THE COURT: To the CEO.

19 MR. BRODSKY: To the CEO saying Meg has been  
20 requesting, it doesn't say the Board, it says Meg  
21 Valeur-Jensen, the general counsel, has been requesting the  
22 books. And Katten continues to be working on them, it  
23 shouldn't take weeks.

24 The impression this created that these minutes  
25 hadn't existed before happened. We need to put in, and it's

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1 directly on point, because these are minutes that match the  
2 ones that are sent in Government's Exhibit 286. They  
3 completely match. And they were sent months earlier, that is  
4 the point, that they were sent months earlier to out the CFO  
5 of the company. And they are business records, your Honor,  
6 generally minutes are the considered to be --

7 THE COURT: They are drafts.

8 MR. BRODSKY: They are drafts. I'm not offering it  
9 for the truth. I don't need it for the truth.

10 MR. PITLUCK: Our point is we are far afield from  
11 cross. The point is he's trying to get it in through our  
12 agent. It's not involving the same people.

13 MR. BRODSKY: Your Honor, this is directly on point  
14 because it's not far afield from cross. I only have a few  
15 documents like this for cross-examination. This one is --  
16 they created the impression in 674 and 286 that it took him a  
17 while.

18 THE COURT: Is Mr. Panoff no longer employee?

19 MR. BRODSKY: An associate.

20 THE COURT: If he had them --

21 MR. KESSLER: The question is, whether they were  
22 sent to the Board. Mr. Brodsky repeatedly proffered they were  
23 sent to the Board. There are no documents that they were sent  
24 to the Board. He offered e-mails sent to Mr. Panoff three  
25 months earlier, it's not related.

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1 MR. PITLUCK: It's unrelated to the cross. The last  
2 document, over our objection, you admitted, we respect that.  
3 But this is now five months earlier sent to different people.  
4 It's not contemporaneously. They are trying to introduce  
5 evidence through our case agent, that's inappropriate.

6 MR. BRODSKY: Exact same minutes that are sent a few  
7 months before, which is exactly the point. They directly  
8 respond to the claim that's being made from the company that  
9 he's taken a while to send the minutes, directly responsive to  
10 their testimony through this agent.

11 THE COURT: But they are not the same. Because one  
12 is characterized as a draft and unsigned, the others are the  
13 final signed work minutes. So they are not the same. I mean,  
14 I don't know if you want this agent to go through word by word  
15 on each document to ascertain whether it's exactly the same, I  
16 don't know what utility. Why wouldn't you -- why would you be  
17 able to put these documents in through the case agent when  
18 presumably Mr. Kravitz who sent these over would be able to  
19 state what these were, what the circumstances were? Are the  
20 redactions the same?

21 MR. PITLUCK: I don't have a copy, your Honor. I  
22 don't believe so. I believe there were heavier redactions in  
23 the other one. I don't know what Retrophin's position was on  
24 asserting privilege in the draft.

25 MR. BRODSKY: I think the redactions are the same.

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1 THE COURT: Why don't we table these and Defendant's  
2 Exhibit -- maybe let the jury a mid-morning break too.

3 (In open court.)

4 THE COURT: Ladies and gentlemen of the jury, we'll  
5 give you a mid morning break as well. Please don't talk about  
6 the case. Remain open minded. Thank you.

7 (Jury exits the courtroom.)

8 (Sidebar continues.)

9 THE COURT: Back on the record.

10 MR. KESSLER: To be clear, Government's Exhibit 286  
11 contains a January set of Board minutes, which are not  
12 contained in the Defendant's Exhibit. Obviously, that's not  
13 the basis of our objection, but that's an additional issue  
14 saying they are the same.

15 THE COURT: I understand the main basis of your  
16 objection seems to be he's the case agent and it's not  
17 appropriate to for the defense to admit other documents  
18 through the case agent. But he is the case agent, right, so  
19 he would have seen or had access to or been provided the  
20 Kravitz e-mail of May 9, 2014, correct?

21 MR. PITLUCK: I have no idea.

22 MR. KESSLER: We don't know.

23 THE COURT: He's the case agent who is the main  
24 person who is presented a number of exhibits, including the  
25 Valeur-Jensen/Aselage e-mails regarding the Board minutes and

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1 Mr. Greebel's transmission of signed final Board minutes that  
2 overlap in someways with the drafts that were sent in  
3 DX-10868A. I think that --

4 MR. PITLUCK: Judge, these are --

5 THE COURT: -- I don't think that you're arguing  
6 that Mr. Kravitz was somehow part of the conspiracy or an  
7 unwitting participant in being asked to send drafts. And I  
8 don't think you're arguing that Mr. Kravitz would have sent  
9 these draft Board minutes without authority or some greenlight  
10 from somebody, right? He didn't just do this on his own.

11 MR. PITLUCK: We have no idea, but I assume not.

12 THE COURT: I think as the case agent who would have  
13 had access to and may possibly have familiarity with  
14 DX-10868A, that it would be appropriate to ask him, to have  
15 him questioned once this exhibit is admitted as to his  
16 familiarity or --

17 MR. PITLUCK: Judge, that would mean that every  
18 document that's been produced is, by that rationale, as the  
19 case agent he could have had access to.

20 Our point is much simpler, which is, your Honor has  
21 held with multiple witnesses in the case the fact that this is  
22 cross-examination does not mean that anything comes in through  
23 him. These are Board meetings sent four months earlier. They  
24 are different sent to a different person than is copied on any  
25 of the e-mails that we introduced. They may want to proffer

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1 it as related, and that's the whole point, they don't get to  
2 introduce their evidence in our case, regardless of whether or  
3 not he may have seen the document.

4 THE COURT: Why isn't it fair ground for cross if  
5 the case agent is saying that way back in September  
6 Mr. Aselage had to prompt Mr. Shkreli after complaints by Meg  
7 Valeur-Jensen, which were not admitted for the truth, urging  
8 Mr. Greebel to get those minutes. And then he responds, I'm  
9 working on it and then sends them within a matter of days.  
10 Why is this not directly addressing or relevant to that?

11 MR. PITLUCK: The case agent -- he put in an e-mail  
12 and said this is a request to Evan Greebel for the Board  
13 minutes, he responded with the Board minutes, that's it. The  
14 Board requested them as of September 24. He didn't testify  
15 there was a delay. He never would have interpreted that.

16 THE COURT: These are not admitted for the truth  
17 either, just admitted for the fact that they are being  
18 transmitted, right?

19 MR. PITLUCK: What difference? How is it related at  
20 all to his testimony that the Board asked Mr. Greebel and  
21 received the statements in September?

22 THE COURT: Because the impression --

23 MR. PITLUCK: An entire different person got them in  
24 May.

25 THE COURT: -- an impression made to the jury by



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1 virtue of the exhibits you put in through the case agent that  
2 Mr. Greebel was stalling and not responding to Meg  
3 Valeur-Jensen's request to provide Board minutes. And it took  
4 the intervention of Mr. Aselage to Mr. Shkreli to prompt him  
5 to get those Board minutes in September. So appears the  
6 impression is, I believe, that Mr. Greebel was somehow  
7 stalling or not providing minutes. And this exhibit,  
8 DX-10868A, provides a fuller more complete picture that  
9 Mr. Greebel's associate was sending draft Board minutes to  
10 Mr. Panoff, who at that time was CFO. Is that correct, CFO?

11 And he, whether or not he passed it on to the Board,  
12 there is maybe a missing piece there, whether or not he's, as  
13 you allege a co-conspirator and would have some reason to  
14 withhold Board minutes from the Board, is something that you  
15 all are going to be arguing about, I suppose, in summation.

16 But it does seem to me that this exhibit is  
17 certainly relevant to the, and directly addresses, and on  
18 cross may in fact be ground for confronting the witness about  
19 a document that was admitted through him.

20 MR. KESSLER: Your Honor, the document that was  
21 admitted through him is about whether or not Mr. Greebel  
22 provided the Board minutes in September 2014. If they have a  
23 document, which they don't, showing that Mr. Greebel provided  
24 the Board the minutes the Board was asking for, you know, two  
25 weeks before the e-mail, that would address that.

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1 THE COURT: But this is a document that shows that  
2 Mr. Greebel's associate provided draft minutes, albeit draft  
3 and unsigned minutes, in May.

4 MR. KESSLER: That's a jury argument they can make  
5 if they put on a case to introduce evidence. It's not  
6 cross-examination of someone else. The difference between an  
7 argument that might be permissible in a trial and  
8 cross-examination of a specific witness is what we're talking  
9 about.

10 THE COURT: But this would be admissible through the  
11 case agent. There is no reason not to admit it through him.

12 MR. KESSLER: Except then the Court said yesterday  
13 the case agent is not a vessel to admit whatever document --

14 THE COURT: I said that this morning, too, I agree  
15 with that.

16 MR. KESSLER: That's what they are doing.

17 MR. PITLUCK: Judge, this is an unrelated issue.  
18 The issue that these two documents create is whether or not  
19 these were communicated to the Board, not whether the case  
20 agent was testifying --

21 THE COURT: But Mr. Greebel doesn't have  
22 responsibility of communicating that to the Board necessarily.  
23 What he's doing is asking his associate in May to provide  
24 these to the CFO, which he does, and then later in September.

25 MR. PITLUCK: Mr. Kravitz provided them to the CFO.

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1 THE COURT: Mr. Kravitz is Mr. Greebel's associate  
2 and appears on numerous e-mails and doing things at  
3 Mr. Greebel's request. And Mr. Greebel is CCed. I think the  
4 defense is entitled to provide this document to complete. And  
5 to have the agent, as the case agent, acknowledge whether or  
6 not this is a document that indicates that draft Board minutes  
7 were transmitted in May.

8 MR. KESSLER: The fact that he's the case agent, if  
9 we had called a paralegal or an agent who knows nothing about  
10 the case, it would be just as improper.

11 THE COURT: I know, but --

12 MR. PITLUCK: Our --

13 THE COURT: It seems to me the basis for your  
14 objection is you want them to call Mr. Kravitz to say I sent  
15 this e-mail if they are going to admit this document, but they  
16 can't admit it through the agent.

17 MR. PITLUCK: I don't care who they call,  
18 Mr. Kravitz, their paralegal, or Mr. Cooley. They can't make  
19 their case or admit documents through our agent. Courts have  
20 held and precedent dictates.

21 This is too far afield from his testimony at trial,  
22 which was entirely related to the September 2014 provision of  
23 the minutes. What we argue on in summation is irrelevant.  
24 Because the case agent didn't say anything about that. He  
25 didn't say this is the first time that they were provided to

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1 anyone at the company, this is the first time that nobody at  
2 Katten provided Board meeting.

3 THE COURT: The document itself, which the wasn't  
4 admitted for the truth, suggested through Mr. Aselage's e-mail  
5 to Mr. Shkreli, that there had been repeated requests,  
6 repeated non-responses, this is taking too long, please reach  
7 out.

8 MR. KESSLER: There is other evidence.  
9 Mr. Richardson testified he does have personal knowledge. He  
10 asked for minutes, Mr. Greebel didn't send it to him.

11 THE COURT: That's fine. But this is directly  
12 related to the provision of Board minutes, draft Board  
13 minutes, to an officer of Retrophin in May of 2014. To say  
14 its unrelated, I think, is not accurate. It's an e-mail. And  
15 the Board minutes are different in that they are not signed.  
16 They are characterized as being drafts. It does show that  
17 minutes are being transmitted to an officer of Retrophin in  
18 May of 2014.

19 MR. KESSLER: But not to the Board.

20 MR. PITLUCK: Judge, I think our point is a more  
21 simple one. These are all --

22 THE COURT: You can still argue that there is no  
23 evidence that any of this is transmitted to the Board by  
24 Mr. Panoff or Ms. Valeur-Jensen or Mr. Greebel or whomever if  
25 there is no evidence to that. But --

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1 MR. PITLUCK: Judge, we're creating an exception  
2 that they can drive a truck through, and they will drive a  
3 truck through, which is the notion that when the case agent  
4 testifies on the limited documents, same day in September, the  
5 e-mail from Aselage didn't say we've been asking for months  
6 and nobody from the company has ever gotten a document, any  
7 Board minutes. Even if it's not admitted for the truth --

8 THE COURT: Repeated request.

9 MR. PITLUCK: Meg has been requesting the Board  
10 minutes from --

11 THE COURT: For a substantial period of time.

12 MR. PITLUCK: That could refer to the Board minutes.

13 THE COURT: Katten continues to say they are working  
14 on putting them together it shouldn't take weeks.

15 So weeks or months, whatever substantial period of  
16 time, the impression that this suggests is that there is some  
17 stonewalling or blockading going on.

18 MR. PITLUCK: That e-mail say weeks, this is five  
19 months.

20 Mr. Brodsky can roll his eyes all he wants. This is  
21 their attempt to put in their case by introducing unrelated  
22 documents through a case agent who hasn't testified about the  
23 substance of anything that so they can argue that the case  
24 agent didn't tell you that the Mr. Panoff, the CFO of the  
25 corporation, received Board minutes from Katten, they hid that

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1 from you.

2 We didn't hide it from anybody. We didn't make any  
3 arguments about it. We said that they sent it in September.  
4 And that the statement that your Honor instructed them is not  
5 for the truth, said that they are requesting it for weeks then  
6 it was sent the same day. That's it. There are a number of  
7 reasons that we can argue why that's important, including when  
8 the Board got the minutes.

9 Just because these are related to Board minutes,  
10 just because they were provided to somebody else in the  
11 company does not mean that his testimony was incomplete,  
12 misleading or inaccurate.

13 THE COURT: But the fact that Mr. Greebel ultimately  
14 sent these minutes, signed, complete to Ms. Valeur-Jensen  
15 doesn't establish when and if the minutes were presented to  
16 the Board.

17 MR. PITLUCK: No, just that they were sent to  
18 Ms. Valeur-Jensen.

19 THE COURT: And this establishes it was sent four  
20 months earlier to the CFO.

21 MR. PITLUCK: The request is being made on behalf of  
22 Mr. Aselage. I think the point is, just because they relate  
23 to Board meetings doesn't mean every document comes in through  
24 the agent.

25 THE COURT: Well, they are the same, they are the

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1 virtually the same month and year of Board minutes.

2 What I don't want, what I wouldn't want for you to  
3 do is have the agent go through one by one and compare.

4 MR. BRODSKY: I won't, your Honor.

5 THE COURT: I mean, these are being admitted not for  
6 the truth but really for the fact that they were sent.

7 MR. BRODSKY: I promise you, your Honor. I got your  
8 instruction yesterday, I'm not going to be putting in -- I had  
9 two binders, very large, I was going to try to put it in, I  
10 admit, 40 or 50 documents. I got your instruction yesterday  
11 and I spent last night completely combing it down to a handful  
12 of documents that I think can show are directly related. I  
13 got your message loud and clear, your Honor.

14 MR. PITLUCK: Judge, I don't know what a handful  
15 means.

16 THE COURT: I think we're going to have to do it  
17 document by document.

18 So far, based on this and based on the prior  
19 document that was intersected by seconds with an e-mail chain  
20 that Mr. Shkreli was having with Mr. Greebel, I thought it was  
21 appropriate to admit.

22 MR. PITLUCK: That was seconds, this is months;  
23 different documents to different people.

24 THE COURT: It's at same month and year and day of  
25 the Board.

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1 MR. PITLUCK: This has January as well.

2 THE COURT: Exactly.

3 MR. PITLUCK: They are sent to a different person.  
4 They are different context, different time periods, different  
5 people requesting. They are different.

6 THE COURT: But neither of them is the Board. One  
7 is the CFO, one is a lawyer in-house for Retrophin.

8 MR. PITLUCK: That's the whole point, Judge. The  
9 whole point is it's requested by different people at different  
10 times. If it had been the Board has requested from  
11 Mr. Panoff, and the Board had requested from Ms. Jensen, we  
12 can argue that they are all intended for the Board.

13 THE COURT: I guess this is the thing, if Mr. Panoff  
14 is attending the Board meetings and he's hearing that Mr.  
15 Richardson is asking for Board minutes and where they are or  
16 making requests to Mr. Greebel to get the Board minutes, he's  
17 sitting on them as of May.

18 MR. KESSLER: That's a different question.

19 THE COURT: One wonders what is going on. I'm  
20 saying, it doesn't necessarily show that Mr. Greebel is part  
21 of some grand conspiracy to withhold Board minutes.

22 MR. PITLUCK: We're so far afield. If that's the  
23 Court ruling -- but it was seconds and now it's months. Just  
24 because they are Board minutes doesn't mean they are related.

25 MR. KESSLER: We are going to do this for each



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1 document.

2 MR. PITLUCK: They are pushing the envelope. Just  
3 because it's the case agent doesn't mean it's a conduit. You  
4 would never let this in with a paralegal. He may have no  
5 personal knowledge of this.

6 THE COURT: Maybe he'll say of that, and that will  
7 be the end of the inquiry, right?

8 MR. KESSLER: They just want the document in it.  
9 They don't want to ask him questions.

10 MR. BRODSKY: Your Honor, I think your Honor has  
11 ruled. We respect your Honor's ruling. I'm not putting in  
12 dozens of documents, I promise you, your Honor. I've narrowed  
13 them to the ones that go to the point. May I?

14 MR. PITLUCK: This is not the first time that we  
15 asked to reargue your ruling on both sides. I guess we  
16 respectfully disagree.

17 THE COURT: Thank you, I understand.

18 (Continue following page.)  
19  
20  
21  
22  
23  
24  
25

DELZOTTO - CROSS - MR. BRODSKY

1 (WHEREUPON, at 11:11 a.m., the jury re-entered the  
2 courtroom.)

3 THE COURT: All jurors present. You may resume your  
4 cross.

5 MR. BRODSKY: Thank you, Your Honor.

6 BY MR. BRODSKY:

7 Q Sir, do you have before you, DX-10868A for  
8 identification?

9 A I do, sir.

10 MR. BRODSKY: Your Honor, we offer it, pursuant to  
11 our discussion.

12 MR. PITLUCK: Your Honor, pursuant to our  
13 discussion, there were foundational issues as well.

14 THE COURT: I am going to admit Defense Exhibit  
15 10868A, pursuant to our discussion at sidebar.

16 (Defendant Exhibit 10868A, was received in  
17 evidence.)

18 MR. PITLUCK: Your Honor, can we have the  
19 instruction then?

20 THE COURT: All right. Members of the jury, you are  
21 instructed once again that Defense Exhibit 10868A is being  
22 admitted not for the truth, but, rather, to give you an idea  
23 as to what was transmitted on a given date and what e-mails  
24 were provided, and the effect of the e-mail on the recipients.

25 MR. BRODSKY: Thank you, Your Honor.

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1 THE COURT: All right.

2 BY MR. BRODSKY:

3 Q Can we blow up the top of this e-mail, to include the  
4 "Best, David."

5 Sir, do you see in DX-10868A, that this is an e-mail  
6 dated Friday, May 9, 2014?

7 A I see the date, yes.

8 Q And the date is May 9, 2014, correct?

9 A That is the date, yes.

10 Q And that is this e-mail, DX-10868A in evidence, is an  
11 e-mail from David Kravitz to Marc@Retrophin.com. Do you see  
12 that?

13 A I see the from and to, and that's what it says.

14 Q And it copies Mr. Greebel, correct?

15 A Correct.

16 Q The subject states: Retrophin draft board of directors  
17 and committee minutes?

18 A That's what it states.

19 Q The attachments read: Retrophin March 17, 2014,  
20 minutes.doc, Retrophin April 7, 2014, minutes.doc, Retrophin  
21 March 20, 2014, minutes.doc, Retrophin March 20, 2014,  
22 nominating and corporate governance committee meetings,  
23 parenthetical, 2.doc, correct?

24 A That's what it reads.

25 Q And the e-mail reads by Mr. Kravitz: Marc, attached for

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1 your review, are draft minutes to the following meetings, and  
2 it lists them there, correct?

3 A You know, I don't want to comment on the e-mail because I  
4 really don't recognize the e-mail.

5 Q So let me ask you about the recognition of the e-mail.  
6 Do you see the Bates number on the bottom right?

7 A Yes.

8 Q Do you see it is R024315?

9 A I do see that, yes.

10 Q Now, that's a Bates number that, obviously, you didn't  
11 put on there, correct?

12 A I did not put it on there, no.

13 Q And that's a Bates number that's comes on a document when  
14 someone produces that, it is a party produces the document,  
15 right?

16 A I assume so.

17 MR. PITLUCK: Objection, Your Honor.

18 THE COURT: We are not assuming. Either you know or  
19 don't know. Don't assume anything.

20 THE WITNESS: I don't know then.

21 BY MR. BRODSKY:

22 Q So you were participating in sending out requests as the  
23 case agent for documents, right?

24 A I did, yes.

25 Q And the document in evidence that you put on direct

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1 examination, Government Exhibit 286, has Bates numbers on it,  
2 right?

3 A They do, but I didn't put them on there.

4 Q But you recognize that when you made document requests  
5 and received documents, they had Bates numbers on them, right?

6 A Did I see Bates numbers, yes.

7 Q And you understand that Bates numbers are consecutive, in  
8 order? In other words, if you look at Government Exhibit  
9 286 -- can you pull up 286 in evidence? It starts with  
10 R024378, right?

11 A Yes, that's what it starts with.

12 Q And then it is consecutive, is it not? It goes 7, it  
13 ends in 79, 80, all the way --

14 A Yes.

15 Q -- through R024413?

16 A Yes.

17 Q Right?

18 MR. BRODSKY: So can we put that up? Mr. Carter,  
19 can you highlight R024412, the last page.

20 BY MR. BRODSKY:

21 Q This is Government Exhibit 286 in evidence. And let's  
22 talk about the defense exhibit that we just put up, if you can  
23 put it side by side.

24 The last page of Defense Exhibit 10868A.

25 MR. BRODSKY: And the last page of that exhibit,

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1 Mr. Carter. Just blow up that Bates number. And put them  
2 side by side. In fact, in 286, put the first -- put the first  
3 number, R024378. Sorry, Mr. Carter.

4 BY MR. BRODSKY:

5 Q Would you not agree with me, sir, if you subtract from  
6 Defense Exhibit 10868A, R024378, from the number R024333, you  
7 get 45 pages of difference?

8 A Yes. That looks right. 45 pages.

9 Q So, sir, since you had seen Government Exhibit 286, and  
10 you know who produced it, right?

11 A Yes.

12 Q And then, sir, you certainly saw, 45 pages later, Defense  
13 Exhibit 10868A?

14 MR. PITLUCK: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. BRODSKY:

17 Q Does it refresh your recollection, sir, having seen now  
18 Government Exhibit 286, end in R02433, on the left, and now  
19 seeing Defense Exhibit -- withdrawn.

20 Having seen --

21 THE COURT: I think you have it flipped.

22 MR. BRODSKY: I have it reversed.

23 Would you mind putting them both up again. Thank  
24 you.

25 BY MR. BRODSKY:

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1 Q On the right-hand side, having seen R024378 in Government  
2 Exhibit 286, and the left-hand side, seeing that Defense  
3 Exhibit 10868A, ends in R024333, does it refresh your  
4 recollection that you did see Defense Exhibit 10868A?

5 A As I said, I don't recognize your exhibit here.

6 Q Okay. And if we can go back to the exhibit and put it  
7 up, DX-10868A, and the first page, if you go to the --

8 MR. BRODSKY: Let's do it this way, Mr. Carter.  
9 Would you go to Government Exhibit 286, and would you just go  
10 to R024393. Would you just blow up the top, please, from that  
11 all the way down to the first couple of paragraphs. Yes,  
12 please. Would you put that side by side with Defense Exhibit  
13 10868A and R024317. And blow up the same section.

14 BY MR. BRODSKY:

15 Q And do you see, sir, that the March 17, 2014 board of  
16 directors meeting draft minutes sent by Mr. Kravitz on May 9,  
17 2014, at least with respect to these first paragraphs at  
18 R024393, match the paragraphs in Government Exhibit -- sorry.  
19 I have got the pages mixed up. Let me just withdraw that.

20 That the pages in Government Exhibit 286, R024393,  
21 match the DX-10868A at R024317, the minutes of the special  
22 meeting of the board of directors of Retrophin, Inc., March  
23 17, 2014, correct?

24 A Sir, they appear the same, but what I said was that the  
25 e-mail cover I don't recognize.

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1 Q Okay. And you see that if you go to the defense exhibit,  
2 March 17, 2014, if you scroll two more pages to R024319, you  
3 see that it is unsigned, correct?

4 A I see it is unsigned, yes.

5 Q And if we do that again, same exercise, and I ask you to  
6 turn to in Government Exhibit 286, the minutes of the special  
7 meeting of the board of directors of Retrophin on March 20,  
8 2014, at R024396, would you do that for me?

9 A Yes, I'm there.

10 Q Okay.

11 MR. BRODSKY: And are you there, Mr. Carter? Can  
12 you blow up the same, just the top or first couple paragraphs.

13 BY MR. BRODSKY:

14 Q And would you then go to Defense Exhibit 10868A at  
15 R024325, do you see that they match up there, correct?

16 A One's a draft, one is not. Otherwise, it looks similar.

17 Q And the draft is on Defense Exhibit 10868A, the  
18 Mr. Kravitz, May 9, 2014 e-mail, right?

19 A It appears to be an attachment to that e-mail.

20 Q And if you scroll through a few pages, you see that at  
21 the ends of those draft minutes for March 20, 2014, the  
22 special meeting, is again unsigned, with a signature block for  
23 Evan Greebel, acting secretary?

24 A It is unsigned, yes.

25 Q And if you scroll with me to Government Exhibit 286, to



DELZOTTO - CROSS - MR. BRODSKY

1 R024403, and you see the minutes of the special meeting of the  
2 board of directors of Retrophin, Inc., dated April 7, 2014,  
3 correct?

4 A Yes, sir.

5 Q And then if you go to DX-10868A, at R024320?

6 A Okay.

7 Q You see what appeared to be the signed minutes of April  
8 7, 2014, in Government Exhibit 286, and the unsigned draft in  
9 Defense Exhibit 10868A, dated May 9, 2014, correct?

10 A I don't see any signature on either document. Which --

11 Q You don't see a signature on the draft, correct?

12 A No. I thought you were on R024320 in your exhibit.

13 Q Right. So if you go to the end of that.

14 A Correct.

15 Q If you go to R024324, in the Defense Exhibit 10868A, it  
16 is unsigned, correct?

17 A It is unsigned, correct.

18 Q And let me do one more. If you go to Government Exhibit,  
19 again -- so does that -- that covers the four minutes -- well,  
20 withdrawn.

21 That covers three out of the four board of  
22 directors -- withdrawn.

23 We just went through and I showed you, four sets of  
24 minutes, correct? That are attached to May 9, 2014. Are  
25 there four sets of minutes attached.

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1 A They are attached to the e-mail I said I don't recognize,  
2 yes.

3 Q Right.

4 Now, you don't recognize the e-mail, you are not  
5 disputing its authenticity, are you, on the stand today?

6 MR. PITLUCK: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. BRODSKY:

9 Q Let me ask you to turn to Government Exhibit, again, 286,  
10 and if you go to R024408, and you see the minutes of the  
11 special meeting of the nominating and corporate governance  
12 committee of the board of directors of Retrophin, dated March  
13 20, 2014?

14 A I see it, yes.

15 Q And then let me ask you to go to R0, in Defense Exhibit  
16 10868A, R024332.

17 A Okay.

18 Q Do those appear to you to be similar, one signed in  
19 Government Exhibit 286, and one unsigned in Defense Exhibit  
20 10868A, from Mr. Kravitz on May 9, 2014, to  
21 Marc@Retrophin.com, copying Mr. Greebel?

22 MR. PITLUCK: Your Honor, objection, and let the  
23 record show that the witness is only being shown a portion of  
24 these exhibits.

25 THE COURT: Right.

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1           You are asking just with regard to the first few  
2 paragraphs, correct?

3           MR. BRODSKY: I would ask all -- you know, for all,  
4 but I understand, I appreciate the time, Your Honor. So I  
5 don't do that if -- given the time. We'll be able to do that  
6 in a different way. So I won't spend the time doing that.

7 BY MR. BRODSKY:

8 Q     Let me ask you, if they appear the same without telling  
9 us if every word is the same?

10          MR. PITLUCK: Objection, Your Honor.

11          THE COURT: Well, all right. I don't think we care  
12 to have this witness go through each and every word of the two  
13 exhibits. I think to the extent Mr. Brodsky you are going to  
14 ask him to look at certain pages, certain paragraphs, do a  
15 quick review and ask if it appears to be similar or the same,  
16 you may do so. But I don't think we can have the time to have  
17 this agent read every single board minute entry.

18          MR. BRODSKY: Understood, Your Honor.

19 BY MR. BRODSKY:

20 Q     This one I'm showing you for the minutes of the special  
21 meeting of the nominating and corporate governance committee  
22 of the board of directors is two pages, right? The March 20,  
23 2014?

24 A     Are you looking at your exhibit or Government Exhibit?

25 Q     If you look at either exhibit.

DELZOTTO - CROSS - MR. BRODSKY

1 A Is it two pages, you said?

2 Q Yes.

3 A It looks like it is two pages, yes.

4 Q And without reading every word, does it appear on, let's  
5 say the second page, in bold, there are four bold portions,  
6 right, in bold, words in bold?

7 A There's five.

8 Q Five. Thank you.

9 Are there five on both pages --

10 A Yes.

11 Q -- and do they match?

12 A Yes, five.

13 Q And they match, correct?

14 A Yes. Although, I will just note that one's a draft again  
15 and unsigned, and the other one is not a draft, and it is  
16 executed with a signature.

17 Q Thank you.

18 Let me ask you to turn to Government Exhibit 286.  
19 If you go to the minutes of the special meeting of the audit  
20 committee of the board of directors of Retrophin, Inc., it is  
21 on RO24410, and it is dated March 20, 2014. Do you see that  
22 one?

23 A Hold on. Okay. Yes, I see it.

24 Q Do you see it?

25 A Yes.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. BRODSKY: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. BRODSKY:

4 Q I am showing you Defense Exhibit 10830A, and is this an  
5 e-mail from Mr. Greebel to Mr. Panoff dated May 6, 2014?

6 A Yes. Appears that way.

7 Q And if you look at the attachment to that e-mail, does  
8 the attachment appear to be, again, without looking at every  
9 word, the same --

10 MR. PITLUCK: Your Honor --

11 BY MR. BRODSKY:

12 Q -- other than being unsigned --

13 MR. PITLUCK: Objection. Is this in evidence?

14 THE COURT: No, it's not.

15 MR. BRODSKY: Right. I am not going to have him  
16 read from it. I am just going to ask him if it appears to be  
17 the same.

18 THE COURT: But if it is not in evidence, what value  
19 does it have to anybody?

20 MR. BRODSKY: Laying the foundation, Your Honor, for  
21 the admissibility, comparing the government exhibit to this  
22 one.

23 THE COURT: All right.

24 BY MR. BRODSKY:

25 Q If you look at Government Exhibit 286 in evidence, and

DELZOTTO - CROSS - MR. BRODSKY

1 you go to R024410, the March 20, 2014 audit committee minutes;  
2 are you there with me?

3 A Yes, I am.

4 Q And then if you compare that generally, I am not asking  
5 you to read every word, to what's attached to Defense Exhibit  
6 10830A, am I not correct that the government exhibit, audit  
7 committee minutes dated March 20, 2014, are signed, but the  
8 ones attached to the May 6, 2014 e-mail, are unsigned?

9 MR. PITLUCK: Your Honor, we have an objection to  
10 the document at all being shown.

11 THE COURT: Being shown?

12 MR. PITLUCK: Yes.

13 THE COURT: It is not being shown yet, is it?

14 MR. PITLUCK: No. To the witness.

15 MR. BRODSKY: I showed the witness.

16 THE COURT: I am overruling -- it is being shown to  
17 the witness.

18 Are you not seeing it, sir?

19 THE WITNESS: I have it in front of me.

20 THE COURT: He has it in front of him. It is not in  
21 evidence, so it is not being shown to the jury.

22 MR. PITLUCK: I will save my objection.

23 THE COURT: Okay. I think there wasn't a response  
24 to the question.

25 THE WITNESS: I'm sorry, could you read that?

DELZOTTO - CROSS - MR. BRODSKY

1 MR. BRODSKY: I will save the court reporter from  
2 reading it.

3 BY MR. BRODSKY:

4 Q Would you compare Government Exhibit 286 in evidence and  
5 RO24410, the audit committee signed minutes, dated March 20,  
6 2014, with the minutes of the special meeting of the audit  
7 committee on March 20, 2014, unsigned, in DX-10830A for  
8 identification, generally, without reading everything.

9 A Generally, they appear the same, with the difference  
10 being one's a draft and unsigned, but I, again, I am not sure  
11 if I've ever seen this e-mail that this document's attached  
12 to.

13 MR. BRODSKY: Your Honor, we offer, for the same  
14 reasons as Defense Exhibit 10868A, in evidence, we offer  
15 DX-10830A.

16 MR. PITLUCK: Your Honor, we object for the same  
17 reasons, and we note these aren't identical.

18 MR. BRODSKY: We're not offering them for the truth,  
19 we are offering them for transmission.

20 THE COURT: All right. I will admit Defense Exhibit  
21 10830A, noting the prior objections, and advise the jury again  
22 that these documents are not being -- this exhibit is not  
23 being offered for the truth, but rather for the information  
24 regarding the date, the sender, and the recipient.

25 (Defendant Exhibit 10830A, was received in

DELZOTTO - CROSS - MR. BRODSKY

1 evidence.)

2 BY MR. BRODSKY:

3 Q Sir, if we go to the first page of RO -- DX-10830A --

4 MR. BRODSKY: Mr. Carter, would you go to the first  
5 page of that document in evidence and just blow up the entire  
6 e-mail chain, the from through Mr. Greebel.

7 BY MR. BRODSKY:

8 Q This is an e-mail in DX-10830A in evidence, that  
9 Mr. Greebel sent on May 6, 2014, to Marc Panoff, correct; yes  
10 or no?

11 A Yes.

12 Q And the subject is, Retrophin March 20, 2014 audit  
13 committee minutes, correct?

14 A That's what it states there, yes.

15 Q And Mr. Greebel states in the e-mail, quote, attached is  
16 a draft of the 3/20 audit committee minutes, correct, end  
17 quote?

18 A That's what it states.

19 Q And as the case agent, you -- have you seen -- let's put  
20 up Defense Exhibit, on the screen, 118-26A. And if you blow  
21 up the -- it is in evidence. And, sir --

22 MR. BRODSKY: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. BRODSKY:

25 Q I will just show you a hard copy in case you ask for a



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1 hard copy.

2 A Thank you.

3 Q Sure.

4 Have you seen this document before, Defense Exhibit  
5 118-26A in evidence, an e-mail from Evan Greebel, dated  
6 December 12, 2013, to Sunil Jain and Edward Hackert, copying  
7 Marc@Retrophin.com?

8 A It does not look familiar to me.

9 Q In the bottom e-mail from Mr. Jain to Mr. Greebel and  
10 Mr. Hackert, copying Marc@Retrophin.com, where it says,  
11 Even -- that's what it says -- prior to December 6, 2013, we  
12 have following minutes or agenda of meeting of BOD held in  
13 year 2013. And then it lists out, one, two, three, four,  
14 five, six meetings. Do you see that?

15 A I see it, yes.

16 Q And with respect to one and two, where it says unanimous  
17 consent to the board, January 28, 2013, we have signed  
18 document; do you see it says that?

19 A I see it is written there. I don't know if it's true.

20 Q Now, it then says, special meeting of board, 2-7-13, we  
21 have signed minutes, right? That's what it says?

22 A That's what it states in this e-mail.

23 Q Right.

24 Now, when you were on direct examination, was there  
25 a single time where you voluntarily said, to any question, "I

DELZOTTO - CROSS - MR. BRODSKY

1 don't know if that's true"?

2 A I volunteered information. I don't know if I used those  
3 specific words or not.

4 Q You don't remember when you used those words, correct?

5 A Those specific words, I don't remember, but I did, I  
6 think, volunteer information. For example --

7 Q Did you ever say at any time during your direct  
8 examination, something was untrue?

9 MR. PITLUCK: Objection, Your Honor.

10 BY MR. BRODSKY:

11 Q On your direct examination.

12 THE COURT: Overruled.

13 THE WITNESS: I believe when it came to the investor  
14 statements, there was a characterization that all of them  
15 involved a MSMB Healthcare investor by the name of Michael  
16 Lavelle, and they didn't, one of them was related to David  
17 Geller. So I guess that would be my -- the one instance that  
18 I remember.

19 BY MR. BRODSKY:

20 Q Understood.

21 Now, sir, are you familiar with, as the case agent,  
22 other e-mails sent to -- by Mr. Greebel, or Mr. Panoff,  
23 forwarding other minutes to people at Retrophin?

24 A Am I familiar with that?

25 Q Yes. Have you ever seen them?

DELZOTTO - CROSS - MR. BRODSKY

1 A I've seen hundreds of thousands of documents probably in  
2 this case so I would have to look at what you're referencing.

3 Q And you mentioned hundreds of thousands of documents, and  
4 that's because hundreds of thousands of documents were  
5 provided to the government, correct, in one way, shape, or  
6 form?

7 A I don't know the exact amount, but it is easily a couple  
8 hundred thousand, probably in the millions.

9 Q And on your direct examination, you read into the record,  
10 a very small portion of the hundreds of thousands of documents  
11 that you received during the investigation, correct; yes or  
12 no?

13 A We read some, yes.

14 Q And you characterize it, given the hundreds of thousands  
15 of documents, you -- isn't it fair, yes or no, to characterize  
16 it as a very small portion of the number of e-mails that you  
17 received --

18 MR. PITLUCK: Objection.

19 BY MR. BRODSKY:

20 Q -- in your investigation?

21 MR. PITLUCK: Objection.

22 THE COURT: Sustained.

23 BY MR. BRODSKY:

24 Q Sir, fair to say, that there are thousands of other  
25 e-mails that you received that you did not present to the jury

DELZOTTO - CROSS - MR. BRODSKY

1 on your direct examination?

2 MR. PITLUCK: Objection, Your Honor.

3 BY MR. BRODSKY:

4 Q Correct?

5 THE COURT: Sustained.

6 BY MR. BRODSKY:

7 Q You didn't select the e-mails that you read into the  
8 record during your two days of your direct examination,  
9 correct; yes or no?

10 A It is not a yes or no.

11 Q Let me ask you, then, the following. You were shown  
12 Government Exhibit 487 in evidence. If we can blow up the  
13 top. And does it not state in 487 in evidence, Mr. Greebel,  
14 December 13, 2012, to Mr. Shkreli, subject, forward,  
15 underneath, quote, FYI, to deal with this latest request. Do  
16 you see that?

17 A Can I see the e-mail underneath it, first?

18 Q Sure.

19 A Okay. Could you scroll up to the top?

20 Okay. What is your question? Sorry.

21 Q Do you see Mr. Greebel's e-mail, December 13, 2012, to  
22 Mr. Shkreli, in Government Exhibit 487, FYI, to deal with this  
23 latest request?

24 A I see the e-mail, yes.

25 MR. BRODSKY: May I approach, Your Honor?

DELZOTTO - CROSS - MR. BRODSKY

1 THE COURT: Yes.

2 BY MR. BRODSKY:

3 Q Now, and the time of that e-mail, sir, is it not, 10:58  
4 p.m.?

5 A Yes.

6 Q Now, you don't know whether that's in GMT time or whether  
7 that's in Eastern Standard Time, correct?

8 A I don't know exactly, no. I mean, you could --

9 Q But the e-mail below from Mr. Greebel says 5:57 p.m.,  
10 correct?

11 A Right. And there was some time stamp -- some was in GMT,  
12 some was in Eastern Standard Time. So based on the previous  
13 e-mail, it looks like it came a minute later, the top e-mail.

14 Q So -- and that would be 5:58 p.m., correct?

15 A Right.

16 Q Now let me show you an e-mail that is at December 13,  
17 2012, at 10:43 p.m., or 5:43 p.m.

18 MR. BRODSKY: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. BRODSKY:

21 Q Am I correct, sir, this is an e-mail from Gregg Jaclin,  
22 December 13, 2012, 10:43 p.m., to Evan Greebel, copied  
23 mike@gopublic.com, martin@msmbcapital.com, and Jennifer  
24 Zammit.

25 A That's what this e-mail says, yes.

DELZOTTO - CROSS - MR. BRODSKY

1 Q And since it's not in evidence, 124-8 for identification,  
2 I'd like you to read silently what is stated in the below  
3 e-mail. And tell me when you're done.

4 A I'm done.

5 Q Okay. And the last sentence, again, without reading it  
6 into the record, do you see the last sentence there, the words  
7 of the last sentence, particularly the first three words? Do  
8 you see that?

9 A Yes, I see it.

10 Q All right. And keeping those first three words in mind,  
11 I would like you to turn to page RO19684, and direct your  
12 attention to the three word description?

13 A I'm sorry, what Bates stamp are you on?

14 Q I'm RO19684.

15 A Okay.

16 Q And if you would read what's in that paragraph silently  
17 to yourself, and let me know when you're done.

18 A Okay.

19 Q And you see how the language of that paragraph in RO19684  
20 of DX-124-8 for identification, matches many of the words, not  
21 all, but many of the words, yes or no, sir, of Government  
22 Exhibit 487 in evidence, where Mr. Greebel sends to  
23 Mr. Biestek and Mr. Sullivan, please send me an e-mail  
24 confirming the following. It's up on the screen for the  
25 comparison between the two.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. PITLUCK: Judge, objecting to using a document  
2 that's not in evidence. It is being used to refresh, it is  
3 being used to compare.

4 MR. BRODSKY: I'm trying to lay the foundation,  
5 Your Honor. That's all.

6 THE COURT: I think you should --

7 MR. BRODSKY: I am not saying what's in it.

8 THE COURT: Lay the foundation. Doing a comparison  
9 and asking him questions about the substance is not laying a  
10 foundation.

11 MR. BRODSKY: Okay, Your Honor.

12 BY MR. BRODSKY:

13 Q And, sir --

14 MR. BRODSKY: Your Honor, with that foundation, I  
15 offer DX-124-8 for identification.

16 THE COURT: For admission?

17 MR. BRODSKY: For admission.

18 MR. PITLUCK: Your Honor, what -- objection.

19 MR. BRODSKY: Not for the truth, Your Honor. I'm  
20 not offering it for the truth.

21 MR. PITLUCK: What foundation is proffered?

22 THE COURT: Well, I'm just not quite sure I am  
23 understanding the foundation that you laid, or tried to lay.

24 MR. BRODSKY: I will try to tie it up a little  
25 better without discussing the contents of the document.

DELZOTTO - CROSS - MR. BRODSKY

1 THE COURT: Okay.

2 BY MR. BRODSKY:

3 Q Government Exhibit 487, going back to that, if we can put  
4 that up on the screen, Mr. Carter.

5 Sir, you see Mr. Greebel's e-mail to Mr. Biestek and  
6 Mr. Sullivan, December 13, 2012, at 5:57 p.m., right?

7 A I do see that e-mail, yes.

8 Q And you see the language, which says, please send me an  
9 e-mail confirming the following. And below it is language  
10 that says, quote, I represent that I am not an officer,  
11 director, or holder of ten percent or more of the outstanding  
12 equity securities of Desert Gateway, and do not alone or  
13 together with any other person exercise control over Desert  
14 Gateway, and not an affiliate, as such term is defined in the  
15 Securities Act of 1933 of Desert Gateway, and in no position  
16 to issue or propose to issue any security relating to the  
17 Desert Gateway.

18 And then it says, Marek, please ask each of the  
19 other investors to send the same e-mail to me. If it is  
20 easier, please print it out and have them sign it, end quote.  
21 Do you see that?

22 A I see it.

23 Q Now, then you see, on DX-124-8, for identification, an  
24 e-mail at the top from Mr. Jaclin, dated December 13, 2012 at  
25 10:43 p.m. That's the time stamp. Whether it's GMT or



DELZOTTO - CROSS - MR. BRODSKY

1 Eastern, put that aside. That's the time stamp, correct?

2 A That is the time stamp.

3 Q And that goes from Mr. Jaclin, in DX-124-8 for  
4 identification, to Mr. Greebel, correct?

5 A Yes. And it also copies --

6 Q It copies three people?

7 A Right.

8 Q And then if you go -- it has an RO Bates stamp number,  
9 correct?

10 A It does.

11 Q And then if you go to Government Exhibit 487, at the top,  
12 15 minutes, that e-mail in DX-124-8 for identification, has a  
13 request, without saying what the request is, has a request in  
14 the third sentence, correct, in DX-124-8 for identification?

15 A What's the question?

16 Q The third sentence, without saying what the content is,  
17 the third sentence in DX-124-8 for identification, yes or no,  
18 requests information?

19 MR. PITLUCK: Objection, Your Honor.

20 THE COURT: Try to rephrase your question,  
21 Mr. Brodsky.

22 BY MR. BRODSKY:

23 Q Reflects what Mr. Jaclin needs; yes or no?

24 A It appears that way.

25 Q And then if you go to Government Exhibit 487 in evidence,

DELZOTTO - CROSS - MR. BRODSKY

1 which has a time stamp of 15 minutes later, correct?

2 A Yes.

3 Q Mr. Greebel says, quote, FYI to deal with his latest  
4 request, end quote. Is that what it says?

5 A It is what it says, but I don't know who "his" refers to.

6 MR. BRODSKY: Your Honor, I am happy to explain  
7 further, but I believe the foundation has been laid for  
8 admission of DX-124-8.

9 THE COURT: All right. I will admit DX-124-8.

10 (Defendant Exhibit 124-8, was received in evidence.)

11 MR. BRODSKY: All right. So if we can go to  
12 DX-124-8, Mr. Carter.

13 BY MR. BRODSKY:

14 Q And you see at the bottom -- and, sir, for DX-124-8, do  
15 you remember prior to your testimony seeing DX-124-8 in  
16 evidence? Yes or no?

17 A My answer is similar to the one before. I mean, perhaps,  
18 I don't recognize it sitting here today, but there's a lot of  
19 documents, so maybe I saw it.

20 Q And the bottom e-mail, on DX-124-8, in evidence, is from  
21 Mr. Greebel, December 13, 2012, at 5:06 p.m., to Gregg Jaclin,  
22 correct?

23 A Yes.

24 Q Copied to Mike Fearnow, Martin Shkreli, right?

25 A Yes, that's what it states.

DELZOTTO - CROSS - MR. BRODSKY

1 Q It states: Gregg, what is the status of the opinion and  
2 the letter, question mark. Evan. Correct?

3 A That's what it says.

4 Q And in response Mr. Jaclin says, December 13, 2012 -- is  
5 the time stamp 10:43 p.m.?

6 A Yes.

7 Q And the bottom e-mail's at 5:06 p.m., right?

8 A Correct.

9 Q And you don't know sitting here today whether that's  
10 10:43 p.m. or 5:43 p.m.?

11 A No. I don't know.

12 Q And it states, from Mr. Jaclin to Mr. Greebel, copying  
13 three people. Am I correct in how I am reading this, sir?

14 A Yes. It copies three people. Correct.

15 Q And does it read: Evan, attached is an initial draft of  
16 the opinion for your review. I am still reviewing, but I felt  
17 this was close enough for your review. The highlighted area  
18 reflects what I need from the shareholders to issue the  
19 opinion, end quote. Right?

20 A Is that what it says? Yes, that's what it says.

21 Q And if you turn to the opinion, go to R019682, the draft  
22 opinion, that's the first page of the draft opinion, correct?

23 A Appears to be.

24 Q And then if you scroll to the highlighted portion on  
25 R09684, three pages into the opinion, and you blow that up,

DELZOTTO - CROSS - MR. BRODSKY

1 and you put it side by side, would you, Mr. Carter, with that  
2 portion, with Government Exhibit 487 in evidence, and  
3 Mr. Greebel's e-mail of 5:57 p.m. to Mr. Biestek and  
4 Mr. Sullivan. That portion, please, with the highlighted  
5 portion.

6 Do you see how the highlighted portion says: In the  
7 present case the company is the issuer of the shares. Is that  
8 how the first sentence reads, sir?

9 A That's how the first sentence reads.

10 Q And the second sentence reads: The above-named  
11 shareholders represent that they are not an officer, not a  
12 director, and not a holder of 10 percent or more of the  
13 outstanding equities securities of the issuer, and does not  
14 alone or together with any other person exercise control over  
15 the issuer, right? That's what it says?

16 A That's what it says, yes.

17 Q And if you go to Government Exhibit 487, Mr. Greebel's  
18 e-mail at 5:57 p.m., is the wording of the e-mail, Mr. Greebel  
19 is requesting confirmation on state, quote, I represent that I  
20 am not an officer, a director, or holder of 10 percent or more  
21 of the outstanding equity securities of Desert Gateway, and do  
22 not alone or together with any other person exercise control  
23 over Desert Gateway. That's what it says, correct?

24 A That's what it says, but it is different than the one  
25 below it.

DELZOTTO - CROSS - MR. BRODSKY

1 Q And the statement where it says, if you scroll to the  
2 highlighted statement, it says, based on my review and  
3 investigation, the shareholders have no affiliation with the  
4 issuer other than as an investor, period. Do you see that?

5 A I do see that.

6 Q And then it says, the shareholders are in no position to  
7 issue or propose to issue any securities relating to the  
8 company. Correct? That's what it says, correct, the next  
9 sentence?

10 A That's what it states, but it is not accurate.

11 MR. BRODSKY: And move to strike, Your Honor.

12 THE COURT: Yes. Just answer the question yes or  
13 no.

14 MR. PITLUCK: Your Honor, we object. The question  
15 misstates evidence. He said "the next sentence," but there's  
16 no sentence before that.

17 THE COURT: All right. Well, Mr. Brodsky, try to  
18 rephrase the question.

19 MR. BRODSKY: Yes. Would you strike the portion,  
20 though, of the --

21 THE COURT: Yes. I will strike it.

22 MR. BRODSKY: Thank you, Your Honor.

23 BY MR. BRODSKY:

24 Q Did I read, sir, yes or no, the last two sentences  
25 correctly of the highlighted portion of DX-124-8?

DELZOTTO - CROSS - MR. BRODSKY

1 A You did.

2 Q And if I ask you am I reading it correctly in Government  
3 Exhibit 487, the last two sentences, "I am not" -- of the  
4 portion that Mr. Greebel is asking for e-mail confirmation on,  
5 quote, I am not an affiliate as such term is defined in the  
6 Securities Act of 1933 of Desert Gateway. I am in no position  
7 to issue or propose to issue any security relating to the  
8 Desert Gateway.

9 Did I read that accurately, sir?

10 A You read it accurately.

11 Q Let me show you, you were asked some questions about this  
12 document, Government Exhibit 108-10 in evidence. Would you  
13 like me to give you a hard copy?

14 A Please.

15 MR. BRODSKY: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. BRODSKY:

18 Q Here's 108-10 in evidence, Government Exhibit. And  
19 that's an exchange on March 31, 2013, correct, sir?

20 A It's an exchange between March 27, 2013 and March 31,  
21 2013.

22 Q And the first page of it, on March 31, 2013, at 4:31,  
23 has, among other things, a list of questions, correct?

24 A Has a list of questions, yes.

25 Q And it ends on -- and that e-mail is March 31, 2013, at

DELZOTTO - CROSS - MR. BRODSKY

1 4:31 p.m., from Mr. Lavelle, correct?

2 A From Mr. Lavelle, yes.

3 MR. BRODSKY: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. BRODSKY:

6 Q I am showing you DX-124-119 for identification.

7 Let me ask you, sir, that e-mail that I have just  
8 shown you, Mr. Lavelle on March 31, 2013, at 4:31 p.m., does  
9 that appear on DX-124-119, at the bottom of the page, and, of  
10 course, in the successive pages?

11 A Yes, it does appear.

12 Q And if you see how the -- there's an e-mail chain before  
13 those questions, in Government Exhibit 108-10, right, there's  
14 a number of e-mails before that?

15 A Yes.

16 Q And those same e-mails appear in DX-124-119 for  
17 identification, correct?

18 A It appears they're the same, yes.

19 Q And then in DX-124-119, having the same e-mail exchange  
20 from Mr. Lavelle's March 31, 2013 e-mail, at 4:31 p.m.,  
21 there's then an e-mail exchange above that, correct?

22 A There is an e-mail exchange above that, yes.

23 Q And that e-mail exchange is between Mr. Shkreli and  
24 Mr. Greebel, correct?

25 A Correct.

DELZOTTO - CROSS - MR. BRODSKY

1 Q And it's dated April 8, 2013, correct?

2 A Yes.

3 MR. BRODSKY: Your Honor, we offer DX-124-119, not  
4 for the truth of the matters asserted, but for the statements  
5 that are made, 803(3) and completeness.

6 MR. PITLUCK: Judge, we have no objection to the  
7 document being admitted into evidence.

8 THE COURT: All right. I will admit Defense Exhibit  
9 124-119.

10 (Defendant Exhibit 124-119, was received in  
11 evidence.)

12 MR. BRODSKY: Thank you, Your Honor.

13 BY MR. BRODSKY:

14 Q Do you see where Mr. Shkreli says to Mr. Greebel -- well,  
15 let's go to the bottom. The bottom e-mail is Mr. Lavelle,  
16 March 31, with a series of questions, correct?

17 A Yes.

18 Q Some of those questions say, "How big was the fund?" Do  
19 you see where it says, "I do not understand what exactly was  
20 in MSMB," by Mr. Lavelle?

21 A I see it, yes.

22 Q It says, "How big with the fund," question mark. Do you  
23 see that?

24 A Yes.

25 Q "What was it actually invested in, including Retrophin,"



DELZOTTO - CROSS - MR. BRODSKY

1 question mark. Do you see that?

2 A I do see that.

3 Q "Who audited that fund," question mark.

4 A I see that as well.

5 Q "Retrophin was always pitched to me as additive to MSMB,  
6 not as an alternative to it." You see, it continues to go on

7 and say: I was told by both of you and Kevin that Retrophin  
8 was an MSMB option. I was not given an option to debate

9 transfer from MSMB and want to understand it. On what basis

10 was the reverse of MSMB and Retrophin agreed. On what

11 valuation basis. Who approved it. Did Retrophin raise

12 private equity. What are the details of that PIPE, and was it

13 offered to all shareholders. Who independently audited it.

14 Mr. Shkreli says in response, forwarding it on April  
15 8, 2013: We should answer these.

16 You see that?

17 A Yes, I see that it is from Martin Shkreli to your client,  
18 yes.

19 Q And Mr. Greebel says, April 8, 2013, to Mr. Shkreli: I'm  
20 not sure how. Correct?

21 A That's what it states here.

22 Q And Mr. Shkreli says in response, quote: And perhaps we  
23 can do a call. Don't let stuff fester for a week, and then I  
24 get sued, end quote.

25 Do you see that?

DELZOTTO - CROSS - MR. BRODSKY

1 A I see it.

2 Q And then Mr. Greebel says: Can you speak at noon.

3 Right?

4 A I see that, too.

5 Q And Mr. Shkreli says: I don't know.

6 Do you see that?

7 A I do.

8 (Continued on the next page.)

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DELZOTTO - CROSS - MR. BRODSKY

1 Q DX124-118 for identification, am I correct, sir, that  
2 it's on April 8 of 2013 an e-mail exchange between Mr. Greebel  
3 and Mr. Shkreli?

4 A I see it, but I don't recognize this e-mail.

5 Q You don't recognize it, okay. And do you see how the  
6 bottom e-mail there is dated April 8, 2013 at 1:07 p.m.?

7 A I see that, yes.

8 Q And the next e-mail is dated, next e-mail is on April 8  
9 at 2:29 p.m., right?

10 A Yes.

11 Q And you know from the e-mail, the bottom e-mail on  
12 April 8, 2013, again without discussing the content, that it  
13 relates to Mr. Lavelle's questions, correct?

14 MR. PITLUCK: Your Honor, object to the form.

15 THE COURT: Try to rephrase, Mr. Brodsky.

16 Q You know from the DX-124-118 from April 8, 2013,  
17 1:07 p.m. e-mail that it is a continuation of the e-mail  
18 discussion in DX124-119?

19 THE COURT: You're asking whether he knows?

20 MR. BRODSKY: I'll withdraw it, your Honor.

21 Q The e-mail on April 8, 2013, 1:07, mentioned an  
22 individual there, correct?

23 A Yes.

24 Q And mentions in the first four sentences, do you see  
25 that, what is stated there by Mr. Greebel?

DELZOTTO - CROSS - MR. BRODSKY

1 A The first four sentences?

2 Q The first four words of the first sentence.

3 A Do I see them, yes.

4 Q And that subject matter is the same subject matter in  
5 DX-124-119; in other words, in DX-124-119 in evidence, you  
6 have Mr. Lavelle's questions. Mr. Shkreli is saying we should  
7 answer these. And Mr. Greebel saying, I'm not sure how?

8 A I'm not sure if they are related to exactly to those  
9 questions. No, I can't comment on that.

10 Q Well, you know it's on the same -- let me take it step by  
11 step.

12 On 124-119 in evidence -- can we put that up,  
13 Mr. Carter, and blow up the bottom, please -- Mr. Lavelle  
14 sends question March 31, 2013, correct, we went over this,  
15 right?

16 A We did go over it, right. He sent questions to  
17 Mr. Shkreli on March 31, 2013 at 4:31.

18 Q On April 8, 2013 at 8:35 a.m. Eastern Standard Time, see  
19 where it says actually Eastern Standard Time there?

20 A Yes.

21 Q It says, we should answer these, right?

22 A That's what it says.

23 Q Mr. Greebel responds, I'm not sure how, right?

24 A I do see that, yes.

25 Q Then if you go to Mr. Greebel's e-mail at 8:59 a.m. it

DELZOTTO - CROSS - MR. BRODSKY

1 says, can you speak at noon, right?

2 A I do see that, yes.

3 Q Then the e-mail that I'm showing you in DX124-118, at  
4 1:07 p.m. is an e-mail from Mr. Greebel to Mr. Shkreli about  
5 Mr. Lavelle's questions, yes or no?

6 MR. PITLUCK: Objection, your Honor.

7 THE COURT: I'll overrule the objection.

8 A My answer is the same, I don't know if he's talking about  
9 these specific questions or other questions. He was an  
10 investor, he could have been speaking being something else.  
11 The subject lines are different. So I don't know.

12 Q What is the subject line -- withdrawn.

13 In DX124-118 there is no subject line, right?

14 A DX124-119?

15 Q 118, for identification.

16 A There is a subject line saying --

17 Q Nothing.

18 A Nothing. And then there is a subject line that says, RE  
19 regarding, in the next chain up.

20 Q But regardless of whether -- you have no personal  
21 knowledge of the content in DX124-119, right, you don't have  
22 any personal knowledge, 119 in evidence. This e-mail  
23 exchange, you don't have any personal knowledge, you weren't  
24 involved in these communications at the time?

25 A I was not involved in these communications, no.

DELZOTTO - CROSS - MR. BRODSKY

1 Q You agree with me, sir, that in DX124-118 for  
2 identification, the Bates number on the document is R050168?

3 A That's what the Bates stamp says, yes.

4 Q Bates number DX124-119 ends R050167, the prior page?

5 A That's what it says, yes.

6 Q In DX124-118 for identification the April 8, 2013 e-mail,  
7 at 1:07 says, without describing the content, the subject is  
8 Mr. Lavelle's questions?

9 MR. PITLUCK: Objection, your Honor.

10 THE COURT: I think that the question as framed is  
11 improper. It should be rephrased. The subject is blank.  
12 He's testified that the subject is blank.

13 MR. BRODSKY: I'm sorry. I got you.

14 BY MR. BRODSKY::

15 Q Does the message under subject relate to Mr. Lavelle's  
16 questions, just generally, not specific questions, does it  
17 relate to questions from Mr. Lavelle?

18 A I'm not sure which questions, though.

19 Q Without knowing which questions, yes or no, does it  
20 relate to questions from Mr. Lavelle?

21 A Yes, it does.

22 MR. PITLUCK: Your Honor --

23 MR. BRODSKY: Your Honor, we offer DX124-118.

24 THE COURT: I'm going --

25 MR. PITLUCK: Your Honor, it's -- we have an

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1 objection. It's hearsay, but with an instruction.

2 MR. BRODSKY: Not for the truth.

3 THE COURT: I'm going to admit Defendant's Exhibit  
4 124-118 and instruct the jury that this document is not being  
5 admitted for its truth.

6 (Defendant Exhibit 124-118, was received in  
7 evidence.)

8 BY MR. BRODSKY::

9 Q 124-118, sir, when you say you didn't know what this was  
10 about. Can you --

11 A I didn't say that. I didn't say that. I said --

12 Q Withdrawn. Withdrawn, sir.

13 Does this e-mail, April 8, 2013, from Mr. Greebel to  
14 Mr. Shkreli say, I cannot answer Lavelle's questions as I do  
15 not know a lot of the information, did I read that correctly?

16 A Yes, you read that correctly.

17 Q Does he go on to say, we need to speak to discuss the  
18 answers so I will prep a response for you based on the tenor  
19 of my conversations with I him I think he is very serious  
20 about pursuing this. Did I read that correctly?

21 A You read that nicely.

22 Q Did Mr. Shkreli say in response, when did you speak with  
23 him?

24 A Yes, that's what he states.

25 Q Then in response do you see Mr. Greebel saying on

DELZOTTO - CROSS - MR. BRODSKY

1 April 8, 2013, I got a call from your office at 12:45 and when  
2 I answered it he was on the line?

3 A Yes, that's what it states there.

4 Q And that is a document you had not seen before, correct?

5 A I don't recall seeing this. I could have. Again, I've  
6 seen a lot of documents in this case. I could have seen it,  
7 maybe I didn't see it. I don't recall sitting here today. I  
8 don't have them all memorized.

9 Q If we could go to Government's Exhibit 114-29A. You  
10 remember being shown a draft of this memo from Retrophin Inc.  
11 to files? Do you need a hard copy, sir?

12 A If you have one that would be great.

13 Q Yes.

14 THE COURT: Tell me again, what exhibit this is?

15 MR. BRODSKY: 114-29A.

16 THE COURT: Thank you.

17 Q You remember being shown on direct examination a memo  
18 with the subject, certain payments by Retrophin, a draft from  
19 Retrophin Inc. to files?

20 A I do recall this, yes.

21 Q And this one in evidence is from Mr. Panoff on August 20,  
22 2013, right?

23 A From Mr. Panoff, yes, on that date August 20, 2013.

24 Q To Mr. Jain and Mr. Hackert, right?

25 A Correct.



DELZOTTO - CROSS - MR. BRODSKY

1 Q The subject is, settlement agreement memo, right?

2 A Yes, it copies Mr. Greebel too.

3 Q The attachments are controlmemo.doc?

4 A Yes.

5 Q The page over, if you go to the second page of the  
6 document, the memorandum, it says in the first portion of the  
7 document, after extensive conversations with Martin Shkreli  
8 the founder of and Chief Executive Officer of Retrophin Inc.  
9 the company and the managing member of MSMB Capital Management  
10 LLC, MSMB, a Delaware limited liability company, an entity  
11 related to the company and in connection with our preparation  
12 of our financial statements for the quarter ended June 30,  
13 2013, Retrophin determined that (i) certain payments made by  
14 the company to three individuals pursuant to certain  
15 settlement and release agreements, and (ii) certain  
16 obligations accepted by the company to make payments to two  
17 additional individuals pursuant to certain settlement and  
18 release agreements should be reclassified as obligations that  
19 should have been borne solely by MSMB and its related funds.  
20 You see that?

21 A Do I see it? Yes.

22 Q And then the next sentence says -- you read a portion of  
23 it during your direct, which was at the bottom of the document  
24 right a draft that was at the bottom; is that correct? Do you  
25 remember that from your direct?

DELZOTTO - CROSS - MR. BRODSKY

1 A Yes.

2 Q Let me read the second paragraph. In April and May 2013  
3 certain investors in funds affiliated with MSMB advised MSMB  
4 that they objected to the number and/or value of the shares of  
5 common stock in the company that they received as a  
6 distribution from such funds. The company was advised of such  
7 investors' objections and the company, MSMB, and its related  
8 funds, and such investors entered into settlement and release  
9 agreements in which the company and MSMB and its related funds  
10 agreed to make certain payments to such investors in  
11 consideration for a full release from such investors to MSMB,  
12 its related funds and the company for any claims that such  
13 investor had or may have against the company, MSMB or its  
14 related funds. You see that, right?

15 A I see it. But it's not accurate.

16 MR. BRODSKY: Your Honor, could I move to strike the  
17 last part?

18 THE COURT: Are you saying the reading was not  
19 accurate?

20 THE WITNESS: I'm saying the content there is not  
21 accurate.

22 THE COURT: Well --

23 MR. BRODSKY: Can I move that to strike that, your  
24 Honor?

25 THE COURT: I think the question was whether he read

DELZOTTO - CROSS - MR. BRODSKY

1 it.

2 Q Did I read it accurately, sir?

3 A Did you read the words on the page accurately? Yes.

4 Q There wasn't a single time during direct examination,  
5 other the time that Mr. Lavelle's statements one of them said  
6 Mr. Geller, that you told the Government during their direct  
7 examination that some fact of which you have no personal  
8 knowledge was not accurate, right?

9 A I gave you that example. I can't think of other  
10 examples.

11 Q Let's turn to Government's Exhibit 560 in evidence. You  
12 were shown this e-mail, sir, since it's short I'll just put it  
13 up on the screen for you. This is from Evan Greebel April 10,  
14 2013, to Martin Shkreli, e-mail to Al?

15 A Yes.

16 Q This is dated April 10, 2013, right?

17 A Correct.

18 Q And this says, Hi, Al would be willing to sign a  
19 consulting agreement. Correct, that's what the first few  
20 words say?

21 A I certainly remember this, yes.

22 Q And that April 10, 2013, would you agree with me, is four  
23 months, approximately four months and ten days before  
24 Government's Exhibit 1129A, Mr. Panoff's e-mail on August 20,  
25 to Mr. Jain and Mr. Hackert. Am I correct about that, sir?

DELZOTTO - CROSS - MR. BRODSKY

1 A You're comparing it to which Government's Exhibit?

2 Q The one I just showed you.

3 A 114-29A?

4 Q Yes. So Mr. Greebel's e-mail to Mr. Shkreli on April 10,  
5 2013, is approximately four months and ten days before  
6 Mr. Panoff's August 20, 2013 e-mail to Mr. Jain and  
7 Mr. Hackert, correct?

8 A Yes, that's correct.

9 Q Let me show you Government's Exhibit 560 in evidence on  
10 the screen. Let me show you Defendant's Exhibit 6650 for  
11 identification. I'm showing you Defendant's Exhibit 6650 for  
12 identification. Do you recognize it as an e-mail from  
13 Mr. Shkreli April 10, 2013, at 2:45 p.m. to Mr. Alan Geller  
14 copied to Mr. Evan Greebel subject -- I won't read the  
15 subject.

16 A I don't know if I recognize this e-mail.

17 Q Putting aside whether you recognize it, you see how it's  
18 an e-mail from Mr. Shkreli to Mr. Geller copying Mr. Greebel?

19 A Yes, I see that.

20 Q It relates to the same person as in Government's Exhibit  
21 560, correct?

22 A Yes.

23 Q And it's the same date, correct?

24 A Yes.

25 Q And Government's Exhibit -- Defendant's Exhibit 6650 for

DELZOTTO - CROSS - MR. BRODSKY

1 identification is approximately an hour-and-a-half before  
2 Government's Exhibit 560 in evidence when Mr. Greebel sends it  
3 to Mr. Shkreli. Below is the e-mail, you can send to Al,  
4 right?

5 A Two hours difference, but yes.

6 Q One is at 2:45 p.m. and one is at 4:44 p.m.?

7 A Yes.

8 Q Approximately two hours?

9 A Yes.

10 Q I was never good at math.

11 Mr. Shkreli -- my apologies. I do not mean to  
12 suggest that, sir. Withdraw that.

13 MR. BRODSKY: The Defendant's Exhibit 6650 for  
14 identification, your Honor, we offer.

15 MR. PITLUCK: Your Honor, we don't object because  
16 this e-mail is already in evidence in Government's Exhibit  
17 105-8, 105-10.

18 THE COURT: 105-8.

19 MR. PITLUCK: And ten. Two different chains that's  
20 the reason why we don't object.

21 MR. BRODSKY: Fabulous.

22 THE COURT: We will just note that this Defendant's  
23 Exhibit 6650 is already in evidence as part of an e-mail chain  
24 found in the exhibits that the Government had already  
25 admitted.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. BRODSKY: Saves me from work.

2 BY MR. BRODSKY::

3 Q Sir, you see how approximately two hours before this  
4 e-mail from Mr. Greebel to Mr. Shkreli in Government's Exhibit  
5 560, Mr. Shkreli sends an e-mail to Mr. Geller copying  
6 Mr. Greebel with the subject, Geller shares, right, that's  
7 what it says?

8 A That's what it says.

9 Q It says, Hi Evan, there was no specific written agreement  
10 with Mr. Geller regarding the shares. However, we did reach  
11 an oral agreement in my office that we would receive adjusted  
12 for all transactions an additional 31,500 shares. Can you  
13 have the transfer agent issue them? Also, perhaps add a  
14 specific release on shares associated with his direct  
15 investments into Retrophin. That's what it reads correct,  
16 sir?

17 A Those are the words in the e-mail, yes.

18 Q And then in Government's Exhibit 565 in evidence, this  
19 was Mr. Greebel at the top on April 19, approximately nine  
20 days later, sends an e-mail to Mr. Shkreli, part of an e-mail  
21 chain, actually the beginning of the e-mail is on April 10,  
22 2013, do you see that?

23 A Can I see the whole document?

24 Q Sure.

25 MR. BRODSKY: May I approach, your Honor?

DELZOTTO - CROSS - MR. BRODSKY

1 THE COURT: Yes.

2 Q The last e-mail in the chain, there is on the same date  
3 that we've been talking about in the defense exhibit, the last  
4 defendant's exhibit on April 10, 2013, right?

5 A Yes, sir.

6 Q And then it's April 18 where Mr. Greebel says at  
7 9:00 p.m. consulting agreement is done, right?

8 A He also says, I need the transfer numbers for me to tie  
9 up that piece, yes.

10 Q Then Mr. Shkreli says, send me the draft, correct?

11 A Yes.

12 Q And then Mr. Greebel says, attached is a draft of the  
13 form. I think you should get blanket approval from the Board  
14 for you to retain consultants who may be paid in cash or stock  
15 up to an aggregate amount of money blank, right?

16 A Are these, are we talking about legitimate consultants  
17 or?

18 MR. BRODSKY: Your Honor, move to strike. I just  
19 asked him whether or not --

20 THE COURT: Just answer the question.

21 MR. BRODSKY: -- it said it.

22 THE COURT: If you can.

23 A That's what it says.

24 Q And then if we can put up Government's Exhibit 245 in  
25 evidence. Is this a document, sir, that you saw before you

DELZOTTO - CROSS - MR. BRODSKY

1 testified, Mr. Panoff's September 9, 2013, e-mail to Steve  
2 Richardson, Steven Aselage, Martin Shkreli, copied to Evan  
3 Greebel, subject, Board agenda with a number of attachments?

4 A Can you zoom out? I think so, yes.

5 Q Having seen it before, you recognize that it attached a  
6 draft consulting agreement for Al Geller?

7 A Doesn't necessarily mean that these people --

8 MR. BRODSKY: Objection, your Honor. Move to  
9 strike.

10 THE COURT: Yes. Please answer the question as  
11 asked. Yes or no, please.

12 A Is this attached? Yes.

13 Q That's an attachment, sir, yes or no, that you've seen  
14 before?

15 A I have seen it before.

16 Q And if you go to page R116063, Mr. Carter, and just blow  
17 up Government's Exhibit 245 in evidence, thank you. Do you  
18 see the language there, sir?

19 A Which language are you talking about?

20 Q I apologize. Under consulting agreement and release do  
21 you see how it says, the agreement is made as of, with a  
22 blank, 2013, do you see that?

23 A I see it.

24 Q Then the paragraph below that paragraph one, you see that  
25 one, correct?



DELZOTTO - CROSS - MR. BRODSKY

1 A I see it, yes.

2 Q Then if you could put up, Mr. Carter, Government's  
3 Exhibit 565, the attachment of the form consulting and  
4 agreement and release and put them side by side to each other.  
5 On the right-hand side is 565, on the left hand side --

6 On the left-hand side, Mr. Carter, you're putting up  
7 Government's Exhibit 565 in evidence. The attachment there,  
8 if you blow up the first two paragraphs consulting agreement  
9 and release through paragraph one.

10 THE COURT: You're comparing 565 with what?

11 MR. BRODSKY: The attachment there with Government's  
12 Exhibit 245 in evidence at R116063 draft consulting agreement  
13 and release with Al Geller.

14 THE COURT: Thank you.

15 Q Sir, would you agree with me that the draft in 265  
16 contains two sentences in the first paragraph, correct?

17 A That's the one on the bottom?

18 Q The one on the top.

19 A There is two sentences, yes.

20 Q And you see how on the upper top it says draft 4/19/13.  
21 Government's Exhibit 245 -- Government's Exhibit 565 is the  
22 draft April 19, 2013. And Government's Exhibit 245 is the  
23 draft on August 20, 2013. Is that an easy way for us to talk  
24 about them?

25 A Yes.

DELZOTTO - CROSS - MR. BRODSKY

1 Q The April 19, 2013 draft at the top, says consultant will  
2 serve as an adviser to the company and provide consulting  
3 services on strategic and corporate governance matters to the  
4 management of the company. Right?

5 A It says it, but.

6 Q And all I'm asking is yes or no, does it say it?

7 A Those are the words on the paper.

8 Q Thank you. And the words on the paper in the August 20,  
9 2013, draft consulting agreement that went to the Board of  
10 Directors on September 9, 2013 has the same first sentence,  
11 correct?

12 A I don't think --

13 Q Yes or no, sir? Same first sentence?

14 A Give me a second to explain.

15 Q Sir, yes or no?

16 A You said that --

17 THE COURT: He just wants yes or no.

18 THE WITNESS: But he's saying that it went to the  
19 Board of Directors when --

20 THE COURT: If you can't answer it yes or no.

21 THE WITNESS: I don't know that it went to the Board  
22 of Directors. I can't answer.

23 Q We'll get right back to that, Mr. Delzotto.

24 The description here that we're comparing,  
25 August 20, 2013, the second sentence in the August 20, 2013,

DELZOTTO - CROSS - MR. BRODSKY

1 draft is different from the one on April 19, 2013, correct?

2 The second sentence on August 20, 2013 says, consultant shall  
3 be permitted to undertake other employment or activities  
4 provided that such employment and activities are not  
5 violations of the terms of this agreement or compete with the  
6 business or activities of the company. Right?

7 A Yes, they are certainly different.

8 Q Okay. And can we blow up Government's Exhibit 245, the  
9 e-mail, just the first page. So, sir, your testimony, I want  
10 to be clear about this, your testimony is you don't know,  
11 sitting here today, you have no personal knowledge as to  
12 whether on September 9, 2013, Mr. Panoff e-mailed to  
13 Mr. Richardson, Mr. Aselage, Mr. Shkreli, copied to  
14 Mr. Greebel a draft of the Geller consulting agreement,  
15 correct, yes or no?

16 A I see the e-mail here. Whether or not those directors  
17 were reviewed it or not, I've interviewed them, I can tell you  
18 what they said.

19 THE COURT: No, sir, you can't do that.

20 MR. BRODSKY: Move to strike, your Honor.

21 THE COURT: Yes. You have to answer the question  
22 asked. The Government is going to have an opportunity to  
23 redirect and if there is something more you have to say you  
24 can have an opportunity. But right now you're being asked  
25 fairly straight-forward questions about whether something says

DELZOTTO - CROSS - MR. BRODSKY

1 something. If you can answer that yes or no can, you should  
2 do so. If not, tell them you can't do so.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Thank you.

5 BY MR. BRODSKY::

6 Q If we can put up Defendant's Exhibit 8281 in evidence, if  
7 we can it blow up. Does this state, sir, Defendant's Exhibit  
8 8281 in evidence, September 9, 2013, Retrophin Inc. telephonic  
9 meetings of the Board of Directors agenda Monday, September 9,  
10 2013, 5:30 p.m. New York time. Is that what the top says?

11 A That's what the top says.

12 Q If you go down to number nine and blow it up.

13 Sir, have you seen this document before prior to  
14 your testimony?

15 A Can I see the document?

16 MR. BRODSKY: Yes. Can I approach?

17 THE COURT: Yes. It may save time to give him the  
18 paper copies that you're going to show him so you don't have  
19 to walk back and forth. He wants hard copies, if you have  
20 them, please give it to him.

21 MR. BRODSKY: Understood, your Honor.

22 Q So prior to your testimony, sir, did you see, yes or no  
23 question, have you seen this document before, prior to your  
24 testimony?

25 A I do not recall seeing this document.

DELZOTTO - CROSS - MR. BRODSKY

1 Q And sitting here right now you don't recognize obviously  
2 the handwriting on the document, right?

3 A I do not recognize the handwriting on the document.

4 Q And where it says in paragraph nine in handwriting --  
5 well, does paragraph nine read, quote, "approve retaining Al  
6 Geller Ken Banta as consultants"?

7 MR. PITLUCK: Your Honor, objecting to this  
8 testimony. Beyond the scope. No personal knowledge. This is  
9 not related to the Special Agent's -- he testified he had  
10 never seen this.

11 THE COURT: It is beyond the scope. So I will  
12 sustain.

13 MR. BRODSKY: I was going to connect it up, your  
14 Honor, with the document I believe that they did discuss.

15 THE COURT: We established the agent doesn't have  
16 personal knowledge. And it's beyond the scope. And he hasn't  
17 seen it before he testified.

18 MR. BRODSKY: Understood, your Honor. No problem.

19 BY MR. BRODSKY::

20 Q Can we put up Defendant's Exhibit 116-102, that's in  
21 evidence. I'm sorry, it's a different one. I'm sorry.

22 THE COURT: To correct the record, you're showing  
23 the witness now...

24 MR. BRODSKY: Sorry, your Honor.

25 THE COURT: Maybe it's easier --

DELZOTTO - CROSS - MR. BRODSKY

1 MR. BRODSKY: Sorry, sorry. I do believe I know  
2 which page I'm going to.

3 THE COURT: Which exhibit, sir?

4 MR. BRODSKY: He has it before him. I want to get  
5 to the right page.

6 THE COURT: DX116-102, correct, Mr. Brodsky?

7 MR. BRODSKY: Yes, your Honor. I'm just trying to  
8 verify. I apologize. Yes, your Honor DX116-102 in evidence.

9 Q And if I could ask you to turn, is this a document the  
10 form 10K of Retrophin Inc. for the period that ends  
11 December 31, 2013, that you had reviewed prior to your  
12 testimony?

13 A I reviewed a lot of SEC form 10Ks. I'm not sure. I  
14 didn't memorize the dates. I may have seen this, I may not  
15 have.

16 Q Let me ask you to turn to page 109 of 121 on the bottom  
17 right, it has page numbers.

18 MR. PITLUCK: Your Honor, we object to scope again.

19 THE COURT: I'm going to sustain the objection.

20 MR. BRODSKY: I was going to direct him to a portion  
21 of it, your Honor.

22 MR. PITLUCK: Your Honor, it doesn't matter. We  
23 maintain our objection.

24 THE COURT: I'm not sure given what the agent has  
25 said so far that this would be an appropriate document for him

DELZOTTO - CROSS - MR. BRODSKY

1 to testify about at this time.

2 MR. BRODSKY: Understood, your Honor. All right.

3 BY MR. BRODSKY::

4 Q So Special Agent Delzotto, based on your recollection  
5 sitting here today, prior to today, can you pinpoint a  
6 specific SEC filing of Retrophin that you did review that you  
7 have in your mind?

8 A I reviewed 10Ks and 10Qs, and I think the S1, possibly  
9 some Form Fours, some Form 13Ds. I mean, I've seen a lot. I  
10 don't remember the dates. They all look very similar to one  
11 another.

12 Q Let me ask you this, sir, if you go to this exhibit,  
13 which you were shown during your direct examination,  
14 Government's Exhibit 664 in evidence, do you remember this  
15 e-mail exchange on March 17, 2014, in connection with a Board  
16 meeting?

17 A I'm sorry, can I get the full document?

18 Q Sure, we'll find a copy for you. While we find a copy  
19 for you, sir, you remember you have Government's Exhibit 286  
20 there?

21 THE COURT: I'm going to give him a copy of my  
22 document 664.

23 MR. BRODSKY: That would be great, your Honor.

24 THE WITNESS: Thank you.

25 Q Sir, that's Government's Exhibit 664, an e-mail exchange

DELZOTTO - CROSS - MR. BRODSKY

1 where there is a discussion between Mr. Shkreli, Mr. Greebel  
2 during a Board meeting, correct, yes or no?

3 THE COURT: During a Board meeting?

4 MR. BRODSKY: Let me direct his attention then.

5 Q You see 664 in Government's Exhibit 664 in evidence  
6 Martin Shkreli, March 17, 2014, e-mail 5:42 p.m. Evan Greebel,  
7 do you see that?

8 A I do see that.

9 Q You see that it says, Blanton, no another time, this  
10 Board meeting going too long?

11 A I see it.

12 Q In response to Mr. Greebel's earlier e-mail, do you want  
13 to raise the consulting agreement during your business update?  
14 It would be good to get Board sign off on it. Right?

15 A Where do you see that?

16 Q The second page of Government's Exhibit 664.

17 A I see those words, yes.

18 Q And can you turn with me to Government's Exhibit that we  
19 just distributed, 286, in evidence, the one dated  
20 September 24, 2014.

21 A 286?

22 Q Yes.

23 A I have it here.

24 Q If you go to the page R024393.

25 A Okay.



DELZOTTO - CROSS - MR. BRODSKY

1 Q And do you see where it says in the third paragraph, the  
2 paragraph that begins, Mr. Shkreli began the meeting by  
3 updating the Board on the company's conversations with  
4 Novartis about the potential acquisition of the right to sell  
5 Clozaril and Fanapt in the United States and Canada. Do you  
6 see that?

7 A I do see it, yes.

8 Q Do you see towards the bottom of that Mr. Shkreli said,  
9 that based on such conversations with Novartis he anticipated  
10 that the company could acquire the rights to sell such drugs  
11 for \$180 million. Mr. Shkreli explained that the acquisition  
12 would be immediately accretive to the company and he reviewed  
13 the model that was previously provided to the Board. Do you  
14 see that?

15 A I do see that.

16 Q Let me put up Government's Exhibit 653. Do you remember  
17 being shown this e-mail exchange? I'm not going to ask you  
18 about the content, just going to ask you about one particular  
19 person on it. Directing your attention to December 29, 2013?

20 A I'd like to see the whole chain.

21 Q Directing your attention to the top e-mail where it says  
22 Mr. Shkreli, December 29, 2013, to Michael Rosensaft copied to  
23 Evan Greebel. Do you see that?

24 A No, I don't see that.

25 Q You don't see where it says Mr. Shkreli to Michael

DELZOTTO - CROSS - MR. BRODSKY

1 Rosensaft, top e-mail?

2 A I have an e-mail dated February 17.

3 MR. BRODSKY: We'll give you 653. You can take my  
4 copy even though that has notes on it.

5 Q You see an e-mail from Mr. Shkreli to Mr. Rosensaft  
6 copied to Mr. Greebel?

7 A The top e-mail, I see that.

8 Q Sir, prior to December 2015, the Indictment, you never  
9 spoke to Mr. Rosensaft, correct?

10 A No, I would not.

11 MR. PITLUCK: Objection, your Honor.

12 THE COURT: Sustained.

13 Q Sir, at no time did you ever speak to Mr. Rosensaft?

14 MR. PITLUCK: Objection, your Honor.

15 THE COURT: Sustained.

16 Q You testified about taking notes during witness  
17 interviews, right?

18 A Yes.

19 Q And you were asked, "What do you take down in those  
20 notes," transcript page 6978:3. You testified, quote, "Me,  
21 personally, I try to take down as much as I can," end quote.  
22 Do you remember that testimony?

23 A Yes. I try to take down as much as I can to the best of  
24 my ability.

25 MR. BRODSKY: Yes. It was yes or no question. I

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1 move to strike.

2 THE COURT: I will strike the answer after yes.

3 Q You testified, sir, yes or no, you are, it's your  
4 testimony you don't show the witness your notes after you take  
5 notes about what they said, yes or no?

6 A Yes.

7 Q And you have an obligation when you take notes as an FBI  
8 agent to take them down accurately, correct, yes or no?

9 A Absolutely.

10 Q You would agree with me, sir, that when you take notes  
11 about something important you take extra care to be  
12 particularly accurate, yes or no?

13 MR. PITLUCK: Objection.

14 THE COURT: Sustained. I think you can try to  
15 rephrase the question.

16 MR. BRODSKY: Yes, your Honor.

17 Q When you take notes you try to be careful to take down  
18 what people say accurately, yes or no, sir?

19 A I take notes to the best of my ability at a given time.  
20 I write them down as accurately as I can to my best ability.

21 Q And if someone admits, for example, to a crime like  
22 insider trading, you take notes accurately about that?

23 MR. PITLUCK: Objection, your Honor.

24 THE COURT: I will overrule that objection.

25 Q Sir?

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1 A I'm sorry, could you restate again?

2 MR. BRODSKY: Do you mind reading that back?

3 (Whereupon, the record was read.)

4 A The phrase, "accurately," I take the notes to the best of  
5 my ability. So if somebody said something about insider  
6 trading, I would do my best to capture that within the 302.

7 Q In this case you testified you had spoken to 45, 40 to 45  
8 people. Do you remember that testimony?

9 A I said approximately.

10 Q And you agree with me, sir, that you may be inaccurate  
11 about that number, about the people you interviewed?

12 A No, I do not agree with that.

13 Q You agree with me, sir, that prior to December of 2015,  
14 one of the people that you interviewed was Jackson Su?

15 A I don't remember the exact dates, but I did interview  
16 Jackson Su, yes.

17 Q And in fact, prior to December of 2015, yes or no, sir,  
18 you interviewed him three times?

19 A I don't know the exact number.

20 Q And is it not true that when you interviewed Mr. Su, in  
21 July of 2015, Mr. Su told you he never backdated any documents  
22 while employed at Retrophin?

23 A You would have to show me the 302. I don't recall off  
24 the top of my head.

25 Q Let me show you --

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1 MR. PITLUCK: Your Honor, I think we need to raise  
2 this at sidebar.

3 THE COURT: All right. Maybe this is a good time  
4 for the jurors to have their lunch break. Don't talk about  
5 the case. Keep an open mind. We'll come get you as soon as  
6 we can.

7 Sir, you can step down too.

8 (Jury exits the courtroom.)

9 (Whereupon, the witness steps down.)

10 THE COURT: Yes, Mr. Pitluck.

11 MR. PITLUCK: Your Honor, this is related to Jackson  
12 Su's testimony and defense's interpretation of the document,  
13 which they argued a number of times and I expect they will do  
14 it again, where, related to Mr. Su putting a date on a  
15 document. I think it was related to Mr. Aselage and saying  
16 his testimony, your Honor, is that I wrote the date on that  
17 because that was the date I received it. And I understand  
18 we're under reliability. And now they are going to attempt to  
19 show the 302, which was never shown to Jackson Su to Special  
20 Agent Delzotto and try to complete an impeachment that doesn't  
21 exist.

22 We don't agree with defense's assertion, which is  
23 not established by testimony that this specific document was,  
24 that a specific document was backdated. So they are setting  
25 up an impeachment that doesn't exist in our view.

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1           And to have the jury say, to have the jury be shown  
2 a 302 that was never shown to the witness, and hadn't been  
3 given the opportunity to deny it, as far as I recall, that  
4 there is some sort of impeachment that goes on. That's, in my  
5 experience, and the Court is well aware of it, you give the  
6 witness an opportunity to deny the statement, then you show  
7 the statement of the 302, then you show the agent and ask did  
8 he in fact say that, the agent says whatever the agent is  
9 going to say.

10           So now it's being put up as sort of affirmative  
11 attack on Mr. Su's credibility without the predicate act.

12           MR. BRODSKY: You may remember that Mr. Su stood up  
13 and testified -- I wouldn't point out that example that  
14 Mr. Pitluck pointed to. I would point to the example where it  
15 was in December of 2012 where through a series of three  
16 e-mails we demonstrated to Mr. Su. And Mr. Su in sum and  
17 substance admitted it, that he had been, he was requested from  
18 the outside accountants to provide documentation for a  
19 transfer of an investment by MSMB into Retrophin. He then  
20 sent to Mr. Shkreli a blank form of the transfer agreement  
21 with the information to be filled out. Mr. Shkreli then  
22 filled it out. It was dated in I believe February 2012. Mr.  
23 Su then sent that document on to Citrin Cooperman and did not  
24 tell them in any way, shape or form that it was dated other  
25 than February of 2012. He admitted on the stand in sum and

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1 substance that that was fine because if the event actually  
2 occurred, and although he backdated the document, you remember  
3 a series of questions I asked him. He said he had told the  
4 Government he had backdated this. He said he couldn't  
5 remember which document. He had told the Government about it.  
6 He said he backdated a number of documents.

7 And when I asked him if he ever told the FBI that he  
8 never personally backdated documents, I believe to the best of  
9 my recollection, is that wasn't true. He said that wasn't  
10 true.

11 What I plan on doing is showing him directly an  
12 inconsistent statement that he made to Special Agent Delzotto  
13 on July 13, 2015, in which he, Mr. Delzotto, said Su never  
14 backdated any documents while employed at Retrophin.

15 That is diametrically opposite of what his actual  
16 testimony was. And it's proper for me to ask.

17 MR. KESSLER: It's not impeachment. What  
18 Mr. Brodsky brought up was a transaction, there was a  
19 transaction in the past, in February of 2012. It was document  
20 dated different ways and Mr. Su and Mr. Shkreli memorialized  
21 it later, that's what he said was fine.

22 Now there is this bait and switch where he's going  
23 to ask him about a statement in a 302. Mr. Su is shown one of  
24 the Marek Biestek backdated documents when the transaction  
25 never happened in the past and no evidence that it occurred in

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1 the past. There was this document created to pretend that it  
2 happened in the past. And then Special Agent Delzotto wrote  
3 that Mr. Su said it was common practice, and Su himself did  
4 not backdate this document.

5 MR. BRODSKY: You skipped the --

6 MR. KESSLER: That Su never backdated the document.

7 THE COURT: Never backdated any or that?

8 MR. KESSLER: He said that, and then he said any.

9 Now we're getting into this word war, where Mr. Brodsky is  
10 going to say backdated means memorializing something that  
11 happened in the past. And where Mr. Su means creating  
12 something that never happened, pretending it did happen. So  
13 now he's going to say that Mr. Su confessed or lied to the FBI  
14 and said he never backdated any document under one  
15 interpretation of backdating, which was not what was being  
16 discussed. And use a different idea of backdating a document  
17 that was discussed on the stand. And so we're going to end up  
18 with confusion where there is no inconsistency.

19 So the point is, we can use backdating loosely to  
20 refer to lots of things, right, but the testimony Mr. Brodsky  
21 is referring to when Mr. Su was on the stand was a transaction  
22 occurring in February, they lost or never had a subscription  
23 agreement, so they filled out a subscription agreement. I  
24 thought it was March, but it might have been December, many  
25 months later. Mr. Su said that was fine. We can discuss what



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1 we think about that. So that's the backdating.

2 (Continued following page.)

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## PROCEEDINGS

1 THE COURT: That was the instance where he testified  
2 that he had verification through the bank records of the  
3 deposit and he could confirm that there was, in fact, this  
4 investment, so...

5 MR. KESSLER: And the cap table shows it repeatedly,  
6 it's in the bank statement, there is no question the  
7 investment happened, they're just memorializing the  
8 subscription agreement. The fact either there wasn't one or  
9 they couldn't find one. So that's the backdating Mr. Su  
10 testified about on the stand to which Mr. Brodsky is referring  
11 to.

12 Then the 302 there's questioning in the context of  
13 Marek Biestek, you know, whiteout tape series of documents  
14 where there was no transfer in June or July and there are  
15 these documents created to say there was. So we can call all  
16 of these things backdating, but they're really two very  
17 different things. And so to take Mr. Su's testimony where he  
18 said, I did the backdating where I memorialized something that  
19 actually did happen and to say, aha, you're lying because you  
20 told the FBI you never backdated, when that backdating is in  
21 reference to creating things that never happened in the past  
22 is just improper.

23 THE COURT: Does the 302 use the language backdate?

24 MR. BRODSKY: Your Honor -- I'm sorry.

25 MR. KESSLER: It says backdating.

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1 THE COURT: Okay. I think that that term --

2 MR. BRODSKY: I will check the transcript, Your  
3 Honor, and then point to Your Honor what the transcript pages  
4 are. I'm happy to. I will do that. I don't have it at my  
5 fingertips, I will do that in the next 20 minutes and send  
6 it -- provide it to your law clerk.

7 MR. KESSLER: Obviously, the 302 is not Mr. Su's  
8 statement and I don't believe -- although perhaps the  
9 transcript will correct us, that Mr. Su was actually shown  
10 this 302 and asked about it. And so that would also be  
11 important.

12 MR. BRODSKY: There is, of course, Mr. Aselage, the  
13 evidence regarding the backdating with respect to Mr. Aselage.

14 MR. KESSLER: Where, again, there is not question  
15 that Mr. Aselage invested money in Retrophin and got Retrophin  
16 shares, it's just a matter of when the document was signed.  
17 So, again --

18 MR. BRODSKY: It was actually a gift of shares,  
19 according to the testimony of both Mr. Aselage --

20 MR. KESSLER: The 50,000 is a gift and then 40,000,  
21 yes. But there was no question those occurred, you know,  
22 contemporaneously with --

23 THE COURT: With the day it was placed on the  
24 document.

25 MR. KESSLER: Right.

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1 MR. BRODSKY: No, I think with Mr. Aselage that's  
2 not true. I think as the testimony is with respect to  
3 Mr. Aselage --

4 THE COURT: There was a date placed on the document  
5 that was in his handwriting.

6 MR. BRODSKY: And he did not put that date there,  
7 didn't know who did and the date was put on there by -- we  
8 demonstrated through email exchanges, long after.

9 THE COURT: Did Mr. Aselage dispute the date of the  
10 transaction reflected in the document?

11 MR. BRODSKY: I'd have to look back.

12 MR. KESSLER: If you look at the cap table it's  
13 there.

14 MS. SMITH: Right. Also for Mr. Aselage, the date  
15 that was put on -- the date that was put on the gift was the  
16 same date as the date on the subscription agreement, they  
17 happened at the same time and that date was actually written  
18 into the subscription agreement and he signed it with the date  
19 on it. It's filled out and those two documents were sent  
20 together in an email. So there's obviously evidence that they  
21 were done at the same time and that the date on the  
22 subscription agreement was the same on the date as the gift.  
23 And that email is from March, but that's because Citrin was  
24 going back and attaching documents, not because at some point  
25 in March a date was added, 2013.

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1 MR. BRODSKY: Your Honor, it was shown through other  
2 emails, you may recall, Ms. Smith, we showed through other  
3 emails during, I believe it was October or November, Mr. Su  
4 was communicating with Citrin Cooperman and that's when he  
5 provided -- we showed a contemporaneous document then and  
6 that's when he backdated the document September 20th.

7 MR. KESSLER: But Ms. Smith's point is that --

8 MR. BRODSKY: Mr. Aselage did testify that he  
9 believes he received the shares in October, November. So I  
10 think we established through Mr. Aselage's testimony it was  
11 backdated. But we are at a point in the record, Your Honor,  
12 we thought it was overwhelming evidence through Mr. Su that he  
13 participated in backdating and he actually said he told the  
14 government that.

15 MR. KESSLER: But the word backdating is  
16 different --

17 THE COURT: I think the problem is that Mr. Su's  
18 definition or understanding of the word backdating maybe used  
19 in a different context or may have a different understanding  
20 than what you may be proffering or what you may want to argue  
21 to the jury. I think the bottom line is the indictment, the  
22 evidence about anyone doing anything regarding putting dates  
23 on a document different from the date the document is actually  
24 executed and whether the reason for that different -- date  
25 differential is due to an alleged fabrication or due to a

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1 transaction that actually occurred and there was no  
2 documentation previously, those are issues for the jury to  
3 sort out.

4 I think that using the agent's statements reflecting  
5 the interview that he had with Mr. Su who may or may not have  
6 been shown the specific documents that you confronted Mr. Su  
7 with during cross, would perhaps create confusion and an  
8 unfair impression because Mr. Su's 302 -- statements reflected  
9 in his 302 may have been discussing apples, whereas on cross  
10 he may have been discussing oranges. So I think it could be  
11 confusing. The term backdating used by this agent, I don't  
12 know what he's defining this word to mean. I don't know what  
13 Mr. Su's definition is. The government also used the term  
14 backdate and so it seems a little convoluted in my mind to  
15 take the agent's 302, and granted he said he tries to be  
16 accurate and reflect what a witness says during the interview,  
17 but whether or not Mr. Su was ever asked about the Aselage  
18 documents or about other documents during this interview is  
19 unknown, right? So I'm not sure that confronting or trying to  
20 impeach a witness who A, hasn't seen the statement of the FBI  
21 agent, and B, may not have been shown the very document that  
22 you think shows that he was inaccurate, would be a fair  
23 reflection of anything.

24 I mean, I think 302s generally, as you know, don't  
25 come in and to the extent the agent may be probed and you may

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1 probe him about his interview with Mr. Su and whether they  
2 talked about X, Y or Z, I think that's fine, but I'm not sure  
3 trying to impeach Mr. Su through the 302, which again is the  
4 agent's statement not his own and he's never seen what the  
5 agent wrote and doesn't have an opportunity to explain whether  
6 that's an accurate reflection or a complete discussion of all  
7 of the issues that he's confronted with on cross would be  
8 unfair.

9 MR. BRODSKY: I understand, Your Honor. I'll try to  
10 go back to the testimony of Mr. Su and try to identify how he  
11 defined backdating, if he did define it, and see if that  
12 changes your determination. Thank you, Your Honor.

13 THE COURT: That's fine.

14 MR. BRODSKY: What time do you want us back?

15 THE COURT: We dismissed them around five of or 10  
16 of, is that right.

17 MS. SMITH: About five of.

18 THE COURT: Five of.

19 Mr. Dubin wanted to say something, did he disappear  
20 again?

21 MR. BRODSKY: I think he did, Your Honor.

22 THE COURT: Oh my Lord. Can you just tell me what  
23 he was going to say so we can deal with it.

24 MR. BRODSKY: I think --

25 MR. CHAN: He was going to ask for some sort of

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1 curative instruction.

2 THE COURT: To cure what?

3 MR. BRODSKY: I think he was worried, Your Honor. I  
4 think he read the transcript, my understanding was he was  
5 worried that inferences could be drawn by the -- reasonable  
6 inferences could be drawn from the fact that the government  
7 was seizing property from Mr. Shkreli, that he had been found  
8 guilty and we have talked about a prior proceeding before the  
9 jury and so I think Mr. Dubin was concerned about jurors  
10 drawing that inference. We weren't moving to strike any  
11 jurors, Your Honor. We were just -- I think he wanted to ask  
12 Your Honor if there was a possible way to handle that. And I  
13 would leave it to him to --

14 THE COURT: Well, he wasn't there, unfortunately,  
15 but I did probe and ask the jurors again and again what did  
16 you hear, what did you hear.

17 MR. BRODSKY: Yes, you did.

18 THE COURT: I didn't even utter the word  
19 "conviction." None of the jurors said they heard that  
20 Mr. Shkreli had been convicted, they just heard the government  
21 was seeking to seize the Wu Tang Clan album --

22 MR. BRODSKY: And other property.

23 THE COURT: -- and other property --

24 MR. BRODSKY: Right.

25 THE COURT: -- but it wasn't in relation to a



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1 conviction as I recall.

2 MR. BRODSKY: No, nobody said conviction.

3 THE COURT: I don't think so, right.

4 MR. BRODSKY: Nobody did.

5 THE COURT: Or a guilty verdict or anything like  
6 that.

7 MR. BRODSKY: Nobody said guilty verdict or our  
8 conviction, Your Honor. Our concern --

9 THE COURT: So to now tell the jurors they shouldn't  
10 infer anything from --

11 MR. BRODSKY: No, I don't know what he proposed --  
12 I'm sorry.

13 THE COURT: I think it would be nice if Mr. Dubin  
14 was here to talk about what he wants, but I don't think given  
15 what has been described thus far -- oh, here he is.

16 Mr. Dubin, come on in, we're trying to deal with  
17 your issue.

18 MR. DUBIN: I went to the restroom, I apologize.

19 MR. BRODSKY: I apprised the Court I thought your  
20 issue was you said to us the reasonable inference could be  
21 drawn from what the jurors said because the forfeiture -- I  
22 was characterizing your words, you'll have to correct me if  
23 I'm wrong, that you were concerned that they would infer from  
24 that, not because the juror said it, but Mr. Shkreli was found  
25 guilty. That's where we were.

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1 MR. DUBIN: That is my concern, Your Honor.

2 THE COURT: So how do you want to deal with it?

3 MR. DUBIN: Well, we would renew our application to  
4 have the jury instructed that he was acquitted of Count Seven.

5 THE COURT: I'm not going to --

6 MR. DUBIN: Okay.

7 THE COURT: It's no more appropriate for me to tell  
8 the jury that he was convicted of Count Eight than it would be  
9 for me to instruct the jury he was convicted of Count Seven.

10 MR. DUBIN: Okay, no problem. I figured I'd make  
11 the record. I think one of things --

12 THE COURT: You made the record, we ruled, we had  
13 extensive briefing and --

14 MR. DUBIN: I know I was renewing it, Your Honor --  
15 sorry. I was renewing it, Your Honor, in light of the fact  
16 that I was just laughed at again quite audibly for no reason.  
17 I was laughed at when I raised it yesterday that it would be  
18 beyond reason that jurors would read this and, in fact, they  
19 did. And, in fact, they did.

20 THE COURT: No juror heard or read that Mr. Shkreli  
21 had been convicted, no juror said that.

22 MR. DUBIN: That's what they said.

23 THE COURT: I probed them, what did you hear, what  
24 did you hear --

25 MR. DUBIN: I read the record.

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1 THE COURT: -- unfortunately you weren't here but I  
2 did exactly what you asked. No juror said they had heard that  
3 he had been convicted. All they talked about -- most of them  
4 focused on the album and the property that the government  
5 sought to seize. They didn't express any understanding as to  
6 why or the basis or that it was arising from a criminal as  
7 opposed to a civil forfeiture.

8 MR. DUBIN: Understood.

9 THE COURT: There are two different standards, as  
10 you know.

11 MR. DUBIN: Understood.

12 THE COURT: I just don't think that the jurors had  
13 reflected any knowledge about a conviction.

14 MR. DUBIN: Here's my concern, Your Honor, and just  
15 so the record is clear, I was back at the office trying to  
16 help prepare in the event we do put on a defense case, so I  
17 wasn't off running around.

18 THE COURT: I'm not accusing of you being off  
19 galavanting, I'm just saying I did exactly what you asked --

20 MR. DUBIN: I understand --

21 THE COURT: -- even though you weren't here.

22 MR. DUBIN: -- and I appreciate it, Your Honor.

23 THE COURT: I did ask each party whether there were  
24 other the questions they would like me to ask of any of the  
25 jurors, they said, no. I didn't want to plant the word

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1 "conviction" in anyone's head.

2 MR. DUBIN: Understood, Your Honor. I read the  
3 record with interest and I appreciate Your Honor's  
4 thoroughness. And I understand that the jurors reiterated  
5 their willingness to abide by the Court's instructions and  
6 appreciate the presumption of innocence. I do remain  
7 concerned for two reasons: One, is that none of them brought  
8 it to the Court's attention -- I'm not making an application  
9 to have them excused, but it is concerning to us that -- and I  
10 think Your Honor, if I'm not mistaken has asked the jury if  
11 they see or come across anything not in the daily admonition,  
12 but at some point, they should bring it the Court's attention.  
13 And the fact that they read this, what we think is highly  
14 prejudicial --

15 THE COURT: They didn't read anything --

16 MR. DUBIN: They heard something that is highly  
17 prejudicial.

18 THE COURT: They heard it and they walked away. One  
19 juror said he walked away after his mother turned on the  
20 television; he walked away. Another juror got a pop up, he  
21 didn't read it, and another juror I think said that --  
22 whatever it was, nobody read anything.

23 MR. DUBIN: But here's the point, the point is --

24 THE COURT: Actually I didn't admonish them to tell  
25 me if they heard or read any media reports. What I said is if

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1 anyone approaches you or tries to talk to you or anything of  
2 that nature occurs.

3 Do you want me to now tell them they should tell me  
4 if they have heard anything, I can do that. I don't believe I  
5 ever instructed them on --

6 MR. DUBIN: I stand corrected.

7 THE COURT: Yes, but if you want me to do it, I'll  
8 do it.

9 MR. DUBIN: I would like to think about it and talk  
10 to my client about it but the problem is, is that they cannot  
11 unhear what they've heard. And what they've heard is that  
12 Mr. Shkreli owes many millions of dollars and the government  
13 is going after it.

14 I don't think that it's an unreasonable concern that  
15 we would feel that these jurors don't know the different  
16 standards as it relates to civil versus criminal forfeiture.

17 THE COURT: No, they don't, they don't even know  
18 that it's a forfeiture necessarily.

19 MR. DUBIN: I just think that it's --

20 THE COURT: Nobody said the word "forfeiture"  
21 either. I'm just saying that the extent of their knowledge  
22 was vague. It was -- I think they deliberately and  
23 consciously tried to avoid it. It was a sense that one juror,  
24 as I said, walked away from the news that his mother had  
25 turned on, another juror didn't read the pop up, and I

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1 forgot -- does anyone remember what the third juror said?

2 MS. SMITH: I think he said it was a very short  
3 segment.

4 MR. DUBIN: He said he heard it and that he walked  
5 out. One of them was on a Kindle and the other one -- look, I  
6 don't quarrel with the way Your Honor covered it. I could be  
7 laughed at, that's fine, I renewed our application to ask  
8 that --

9 THE COURT: To tell them Mr. Shkreli was  
10 acquitted --

11 MR. DUBIN: Acquitted of Count Seven.

12 THE COURT: What about Count Eight?

13 MR. DUBIN: I think that I would have to speak to my  
14 client about whether or not he'd be willing to live with an  
15 instruction that included that while Mr. Shkreli was --

16 THE COURT: I believe I could commit an error if I  
17 were to give that instruction --

18 MR. DUBIN: Understood. Understood. That's why I  
19 said I would like to --

20 THE COURT: -- because I don't think that the jurors  
21 should make any decision based on what a co-defendant, whose  
22 trial was severed with great consideration by the Court to the  
23 arguments that you made, Mr. Greebel's counsel, Mr. Brodsky  
24 made on his behalf to severe.

25 It's been an obvious hardship --

## PROCEEDINGS

1 MR. DUBIN: -- understood.

2 THE COURT: -- to do it this way, but why on earth  
3 would I then want to tell the jury that Mr. Shkreli had been  
4 convicted of Count Seven?

5 MR. DUBIN: Acquitted of Count Seven.

6 THE COURT: Acquitted of Count Seven and convicted  
7 of Count Eight.

8 MR. DUBIN: The problem we're faced with, Your  
9 Honor, and I'm not so sure there is anything curative that the  
10 Court can do, is at the beginning of the case, like, for  
11 instance, with respect to juror number three, he comes in says  
12 I already had a low opinion of him, I think he said words to  
13 that effect during jury selection and again yesterday. But  
14 what he read prior to the trial wasn't what he heard. Whether  
15 it was in a snippet or not, he now has in his mind that the  
16 government is going after Mr. Shkreli for a lot of money and  
17 in his mind there has to be a reason for it, right? So we're  
18 just faced with a very unfortunate situation where I'm not  
19 suggesting that the Court can control the media coverage, but  
20 it was a concern that I had and, unfortunately, it came to  
21 fruition. I guess we're just going to have to take them at  
22 their word that they're able to block it out somehow. I think  
23 it's difficult for jurors to do that after they have, you  
24 know, gone for two months and, you know, heard all of this  
25 evidence much of it about Mr. Shkreli not very positive. And

## PROCEEDINGS

1 that was why I thought long and hard about putting in a letter  
2 or whether we move to excuse them. Frankly, it's a very  
3 difficult decision.

4 THE COURT: You could have excused juror number  
5 peremptorily or for cause if you thought he was a problem.

6 MR. DUBIN: Well, I didn't that's why we didn't, but  
7 now he has -- now someone that already had an unfavorable  
8 opinion --

9 THE COURT: Well, you're citing things he said  
10 during voir dire.

11 MR. DUBIN: But now to add to that he's heard his  
12 information. Look, Your Honor, I don't want to waste the  
13 Court's time, I'm going to let you have lunch, now I feel I'm  
14 just venting so there is no need for it.

15 It is a concern that they have been exposed to what  
16 we feel is damaging, prejudicial information that is not  
17 making it into evidence and now they have said the right  
18 things to Your Honor and we have to take them at their word.  
19 So I made the application, I respect the Court's decision.  
20 And I understand the quandary that the Court would be in to  
21 instruct them that he had been acquitted of Count Seven and  
22 then what do you with Count Eight, I understand and I  
23 appreciate that. It's not --

24 THE COURT: He was convicted of other counts as  
25 well.



PROCEEDINGS

1 MR. DUBIN: Yes, none of which Mr. Greebel is  
2 charged with.

3 THE COURT: With which Mr. Greebel was not charged.

4 MR. DUBIN: Right.

5 THE COURT: As I said, the application to sever the  
6 trial was opposed by the government quite vigorously. I  
7 granted the application, but one cannot now complain that  
8 because the media coverage of the first trial so long as the  
9 jurors in this trial confirm under oath to me that they can  
10 still be impartial and fair and open minded and respect the  
11 presumption of innocence, that is what I'm left with.

12 MR. DUBIN: I agree.

13 THE COURT: I'm sure not going to make a bigger  
14 problem by instructing the jury that Mr. Shkreli has been  
15 acquitted of Count Seven but convicted of Count Eight.

16 MR. DUBIN: Understood, Your Honor. Thanks for  
17 hearing me out.

18 THE COURT: You're welcome.

19 MR. BRODSKY: Your Honor, I'm handing up to you, and  
20 it's not for discussion now, transcript page 5054, lines 1  
21 through 5 with respect to Mr. Su's testimony. I would ask  
22 Your Honor to look at that with respect to his statement in  
23 the...

24 THE COURT: Let's return by five, please.

25 MR. KESSLER: Thank you.

## PROCEEDINGS

1 (Open court; no jury present.)

2 THE COURT: Yes. Are you ready?

3 MR. PITLUCK: Yes, we are. The government is.

4 MR. BRODSKY: I was just going ask, Your Honor, if  
5 you had looked at that transcript cite and had reconsidered it  
6 at all, or if you thought still that there was not an  
7 inconsistency, as I thought he had testified that -- he used  
8 the word "backdating," because I did, and he had testified  
9 that he did backdate documents, but he thought it was  
10 justified because he -- the backdating he did that was  
11 permissible, using the word "backdating," was where you had  
12 support for the backdating.

13 MR. KESSLER: Where is the actual cite he says he  
14 used the word "backdated"?

15 MR. BRODSKY: That's the same -- is what I pointed  
16 out to Your Honor --

17 THE COURT: Page 5054 of the transcript. Do you  
18 have it?

19 MR. BRODSKY: Lines 1 through 7.

20 MR. KESSLER: I do, but --

21 MR. BRODSKY: I used the word "backdating" in my  
22 question, and he accepted it. So -- I believe that is  
23 directly inconsistent with the testimony that -- with his --  
24 with Mr. Delzotto's interview of Mr. Su, where he says, Su  
25 said he never backdated any documents.

## PROCEEDINGS

1           THE COURT: I guess my concern or my discomfort with  
2 this is you're using a hearsay statement, a double hearsay  
3 statement, to try to impeach somebody who never looked at,  
4 confirmed, proofread, or, you know, adopted the hearsay  
5 statement of the agent as his own, and, furthermore, that he's  
6 been -- what he was asked at the interview, it seemed to be  
7 focused on a specific document, and the dialogue or the  
8 conversation seemed to be focusing on other instances that  
9 were described in -- during his examination at trial. So, for  
10 example, the Aselage documents and other documents, I just  
11 don't know that it is appropriate to impeach someone with  
12 intrinsic evidence that is double hearsay.

13           MR. BRODSKY: All right, Your Honor.

14           THE COURT: Do you agree?

15           MR. BRODSKY: I respectfully disagree. I believe I  
16 have seen it done before where the witness testifies, having  
17 been interviewed by the FBI, and then the FBI agent takes the  
18 witness stand, and if there's an inconsistency between what a  
19 witness told the jury and what a witness told the FBI  
20 previously, I believe that is admissible impeachment  
21 testimony. It's a statement that a witness has made that's  
22 inconsistent and impeaches their testimony, under an  
23 obligation to tell the FBI the truth.

24           MR. KESSLER: Your Honor, there's two problems  
25 there. First of all, Mr. Su was not confronted with the 302,

## PROCEEDINGS

1 which I believe is the standard practice, given an opportunity  
2 to say whether it refreshes recollection or ask those kinds of  
3 questions. Second of all, this is a situation where the word  
4 "backdating" just means different things. And it can have  
5 different import. As the two pages of transcript that  
6 Mr. Brodsky cited, or three pages of transcript, make clear,  
7 they're talking about this kind of backdating and that kind of  
8 backdating, what's okay, what's not okay. So even if you  
9 could introduce the statement where Mr. Su said "I never  
10 backdated a document," it doesn't mean that what he said is  
11 inconsistent. It is not like, "Did you ever tell the FBI you  
12 your shirt is red?" "No." And then the 302 says Mr. Su said  
13 his shirt is red. That might be closer -- blue. Sorry.  
14 Blue.

15 THE COURT: Interesting you've raised that. I was  
16 discussing with my clerk, we used a car example, the color of  
17 a car, you know, but it is the same thing. It is not --  
18 agreed, it is the same thing. And I just don't think it is  
19 appropriate when Mr. Su was not given an opportunity to see  
20 this, adopt it, say that it is accurate, explain the context.

21 MR. BRODSKY: Understood, Your Honor. We are ready  
22 to proceed.

23 THE COURT: Okay. Are they all back?

24 MR. KESSLER: And, Your Honor, just to follow up  
25 from yesterday, two things that do not need to be addressed

## PROCEEDINGS

1 now or shouldn't, if the jury's here, but just that are  
2 hanging out there. Mr. Chan and I have talked.

3 We have narrowed the dispute about the Rosenfeld  
4 arbitration award --

5 THE COURT: Okay.

6 MR. KESSLER: -- substantially, so we can talk about  
7 that when Special Agent Delzotto's done.

8 THE COURT: What about the experts?

9 MR. KESSLER: So I am happy to get into it when the  
10 jury is not coming, but we still have a problem with the  
11 disclosure.

12 THE COURT: For Mr. Ferruolo.

13 MR. KESSLER: For Mr. Ferruolo. It is the same  
14 disclosure as yesterday, it doesn't add anything, change the  
15 bases, elaborate, and it actually confuses the issue about the  
16 relevance of a lock up agreement instruction and testimony  
17 about lock up agreements, but that's something we can address  
18 when the witness' testimony is done.

19 THE COURT: Okay.  
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DELZOTTO - CROSS - MR. BRODSKY

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(Continued on the next page.) (WHEREUPON, at 2:13 p.m., the jury re-entered the courtroom.)

THE COURT: All our jurors are back. Please have a seat, everybody.

Agent Delzotto, you are still under oath.

Mr. Brodsky, you may resume your cross.

MR. BRODSKY: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. BRODSKY:

Q Yes or no, Special Agent Delzotto, prior to December 2015, the FBI did not attempt to speak with Mr. Greebel before arresting him to get his side of the story?

MR. PITLUCK: Objection, Your Honor.

THE COURT: I am going to overrule the objection.

MR. PITLUCK: Your Honor, I think we need a sidebar.

THE COURT: All right.

(Sidebar conference.)

(Continued on the next page.)

## SIDEBAR

1 (WHEREUPON, the following proceedings were had at  
2 sidebar, out of the hearing of the open courtroom, to wit:)

3 THE COURT: We are going to give the instruction  
4 that the FBI investigation is not on trial and they are not to  
5 make any inferences about what they did or didn't do.

6 MR. PITLUCK: Your Honor, we understand that and  
7 apologize for doing this on the first question. Didn't know  
8 it was coming. Obviously, the issue here is, the crime fraud  
9 exception determination and privilege issues, there's lot of  
10 reasons why Mr. Greebel was not interviewed prior to his  
11 indictment, including -- I am sure Special Agent Delzotto  
12 would be happy to get into, but the timing of the interview,  
13 and the fulsome answer of that question invokes a lot of  
14 issues that I am sure defense would like to keep away from the  
15 issue, like an independent judge's determination that the  
16 crime fraud exception applied, and there's no privilege  
17 attached to those communications between Mr. Greebel and  
18 Mr. Shkreli. So it is misleading if he's allowed to answer  
19 that question and not allowed to explain why.

20 MR. BRODSKY: Your Honor, respectfully, the case law  
21 is clear, as Your Honor has just ruled, that a rush to  
22 judgment defense is permissible so long as Your Honor gives  
23 the instruction that a particular investigative technique is  
24 necessary, but the government -- that does not open the door  
25 for the government to get into the crime fraud exception,

## SIDEBAR

1 because if you look at the judge's actual ruling, the judge  
2 did not find that Mr. Greebel's communications or anything he  
3 said was in furtherance of any crime. The judge made multiple  
4 rulings on multiple grounds, and he was very clear to say he  
5 didn't have all information, and he was also very clear in  
6 making it very apparent he was not deciding whether or not  
7 Mr. Greebel played an active -- or a role in it.

8 So there is no -- the crime fraud exception, in  
9 going to Judge Weinstein, A, is not an explanation for why  
10 they didn't talk to Mr. Greebel. B --

11 THE COURT: Well, it might be in the agent's mind.  
12 We can't say that with any certainty. He might have  
13 legitimately believed that there were reasons, I mean, further  
14 reasons why he could not appropriately interview Mr. Greebel,  
15 which he will be allowed to explain on redirect, if we go down  
16 this road. I think it is only fair.

17 MR. BRODSKY: All right. We are going to bring out  
18 the order by Judge Weinstein that he did not make a finding of  
19 crime fraud. I think inadmissible hearsay statements from  
20 Judge Weinstein, I don't think he can comment at all on Judge  
21 Weinstein or the proceeding. He can make a comment that he  
22 thought he had to go to a judge to get a crime fraud, but he  
23 cannot comment on Judge Weinstein's ruling, just as we weren't  
24 allowed to get into Judge Ramos' ruling and Judge Ramos'  
25 ruling with respect Jackson Su, and precluding any elicitation



## SIDEBAR

1 of Judge Ramos cited or the issues he was raising or the  
2 application that was made. All that was hearsay. The same  
3 would hold true here.

4 THE COURT: You did cross-examine Mr. Su extensively  
5 about Judge Ramos' ruling. My point is to the extent that the  
6 agent's actions in deciding whether or not to interview  
7 Mr. Greebel would be informed by certain facts and events that  
8 he might wish to explain, and I think that it might not be  
9 appropriate -- I mean, I can't -- I would not want to limit  
10 his explanation. Now, Judge Weinstein's actual ruling, the  
11 substance of it would not necessarily come into evidence, but,  
12 certainly, the agent could say that, you know, a judge did  
13 issue an order, and it was my understanding, or whatever it  
14 may be, I don't know what he is going to say on that point on  
15 whether the factors would have influenced his decision not to  
16 interview Mr. --

17 MR. BRODSKY: Your Honor, he can't testify about  
18 Judge Weinstein's order.

19 THE COURT: He can testify as to the effect it had  
20 on him and what he thought he could or could not do, and --

21 MR. BRODSKY: But as Your Honor knows, Judge  
22 Weinstein's order didn't preclude him from doing anything.  
23 Once Judge Weinstein accepted the crime fraud, and they got  
24 the e-mails, there was nothing to prevent them from going to  
25 ask Mr. Greebel questions about it.

## SIDEBAR

1 THE COURT: My point is, if he's mistaken, but has a  
2 good faith belief that there are certain things he can and  
3 cannot do, he's going to explain Judge Weinstein's order, I  
4 don't know about what he would say, but I am just trying to  
5 make the point that his explanation for why he didn't  
6 interview Mr. Greebel would be appropriate to bring out on  
7 redirect. And if that includes Judge Weinstein's order or his  
8 misunderstanding or misapplication of it, that may be the  
9 case. But I -- you know, I don't know --

10 MR. BRODSKY: Okay.

11 THE COURT: -- what he would say on that.

12 MR. BRODSKY: Maybe the government can proffer what  
13 he would say.

14 MS. SMITH: Well, I think part of the rush to  
15 judgment is complicated in this case. Obviously, there were  
16 steps that were taken to obtain certain evidence, for example,  
17 going to Judge Weinstein and getting, prior to indictment,  
18 certain e-mails deemed not privileged pursuant to the crime  
19 fraud exception.

20 There were also steps taken afterwards that are  
21 complicated, how the Department of Justice subpoenas, since  
22 the subpoena went to Katten, which is a law firm, there's an  
23 entire process that's goes on down to DC and getting special  
24 approvals.

25 The fact that Mr. Shkreli chose to waive privilege

SIDEBAR

1 at certain points, so there were certain documents that only  
2 became available after some of those steps were taken, not to  
3 mention the fact that Mr. Greebel has access to the documents  
4 that the government does not.

5 So I just -- the more you open the door to the kind  
6 of -- I think we just want to be straightforward about what we  
7 think this is opening the door to, all these various different  
8 steps. We think that some of this sort of rush to judgment is  
9 inappropriate because the government is not on trial, and we  
10 will obviously object to that, as appropriate.

11 Any suggestions about the post arrest interview that  
12 did not come into evidence, I do not know what Mr. Brodsky is  
13 planning to do with those, so I will be interested in the  
14 proffer on that. Because, obviously, commenting on any  
15 decisions that were made by the defendant, when the defendant  
16 does not himself testify, would be inappropriate. So we are  
17 just very concerned about the scope of this, particularly  
18 since it is our position that the defense is really pushing  
19 this for rush to judgment past where it is appropriate in  
20 terms of putting the government's investigation on trial.

21 MR. PITLUCK: Judge Chen just made a similar finding  
22 in the FIFA case, where a similar issue has come up by some of  
23 the defendants in that issue on putting the government's  
24 investigation on trial through questions related to the case  
25 agent.

## SIDEBAR

1 THE COURT: I mean, I guess my question is whether  
2 the question about interviewing Mr. Greebel prior to arrest is  
3 something that is going to trigger, you know, in fairness to  
4 the government, an ability to have the agent explain what he  
5 did and why he did it.

6 It seems to me that while you have the right to  
7 assert the defense, there would have to be a balanced  
8 consideration of what's deemed appropriate on redirect. And I  
9 do think that certainly the agent's view of what was  
10 appropriate vis-a-vis interviewing Mr. Greebel to certain  
11 steps would be fair ground. My concern, my concern --

12 MR. BRODSKY: Yes, Your Honor.

13 THE COURT: -- has been that I will give this  
14 instruction that the government's investigation and  
15 prosecution is not on trial, and that they are not to  
16 second-guess or speculate about techniques that the government  
17 used or didn't use, or evidence that the government presented  
18 or didn't present, all of that is in the instructions.

19 I am thinking about whether if we open that  
20 Pandora's box a crack, whether we are all going to be sorry  
21 that we have, you know, a whole other sideshow that's going to  
22 be --

23 MR. BRODSKY: I know.

24 THE COURT: -- not great for either side. It might  
25 be better not to.

SIDEBAR

1 MR. BRODSKY: I will confer --

2 THE COURT: I am thinking that it may be better not  
3 to go down this road.

4 MR. BRODSKY: Your Honor, may I take a few minutes  
5 to confer with my client and I --

6 THE COURT: Of course.

7 MR. BRODSKY: -- would like to --

8 THE COURT: I think the government has one other  
9 point.

10 MR. BRODSKY: Okay.

11 MS. SMITH: Just to put on the record, also, there's  
12 a suggestion here that things would have been different, had  
13 the government had different pieces of evidence at different  
14 points in time. For example, an indictment would or would not  
15 have come down, or the government would or would not have  
16 proceeded to trial, where the jury is really just being asked  
17 to look at the universe of what is in front of them, not to  
18 speculate about when the government obtained it, or, you know,  
19 we don't have kind of any arguments about searches or any  
20 issues along those lines. And so to suggest to the jury that  
21 they shouldn't just consider what's in front of them, but the  
22 manner in which what's in front of them, at what time what's  
23 in front of them came into the government's possession, as if  
24 that changes their analysis of the evidence is inappropriate.

25 MR. BRODSKY: I think the case law is clear, and I

## SIDEBAR

1 think the government agreed in the pretrial motions that to  
2 the extent the failure to use an investigative technique gives  
3 rise to reasonable doubt about the quality of the evidence to  
4 find somebody guilty beyond a reasonable doubt, then that  
5 argument is permissible for a person who's accused of a crime,  
6 and that's the context in which somebody can make it. That's  
7 the context in which we would make it.

8 MS. SMITH: We disagree. The other issue with the  
9 question in part was that Mr. Brodsky said for Mr. Greebel to  
10 tell his side of the story. So if the questions themselves  
11 are suggesting what Mr. Greebel --

12 THE COURT: You are Mr. Greebel's --

13 MS. SMITH: -- would have said or would not have  
14 said is highly inappropriate.

15 THE COURT: It kind of suggests he has a story to  
16 tell. I --

17 MR. BRODSKY: It's cross.

18 THE COURT: I know it may be for cross, because you  
19 are his representative, but my concern is when you say  
20 Mr. Greebel has a story to tell, it is going to create in the  
21 jurors' minds, despite my instructions, that he has a story to  
22 tell it, lets it. You don't want to shift the burden. I  
23 think you need to be very careful, because you just put that  
24 out there, and we have been telling them he doesn't have to  
25 tell any story. The burden is on the government.

## SIDEBAR

1 MS. SMITH: We are concerned about that.

2 MR. BRODSKY: Can I confer?

3 THE COURT: Yes.

4 MR. BRODSKY: Thank you.

5 (Short pause while all lawyers conferred.)

6 MR. BRODSKY: Okay. We're ready to proceed.

7 THE COURT: Let's put something on the record.

8 MR. BRODSKY: Yes, Your Honor.

9 I am going to proceed with the cross-examination,  
10 question by question, I think.

11 THE COURT: Withdraw the last question? Or --

12 MR. BRODSKY: I am going to proceed with this  
13 question. We have client consent to proceed with the current  
14 question.

15 MR. KESSLER: The current question suggests what  
16 Mr. Greebel would have said and suggests that he has some kind  
17 of story to tell. I mean, that is --

18 MS. SMITH: Forget what he consents to.

19 MR. KESSLER: -- telling the jury he would have  
20 suggested something different than what the government has.  
21 That's completely improper unless he's going to testify.  
22 There's no way to cross-examine that statement.

23 MR. DUBIN: Your Honor --

24 MR. KESSLER: There's no way for us to address the  
25 idea that Mr. Greebel has a story to tell, you know,

## SIDEBAR

1 question -- there's no way for us to address that unless he  
2 testifies.

3 THE COURT: Well, on the -- I think the jury --

4 MS. SMITH: "Did you speak to him," is a fair  
5 question. If we are going to go down this road, "is your  
6 intent to interview him," is one thing. "To hear his story,"  
7 is a completely inappropriate statement.

8 MR. BRODSKY: Your Honor, may I return -- I know on  
9 a question by question Your Honor will take the objections of  
10 the government.

11 MS. SMITH: There's a question outstanding. The  
12 question is what's the ruling on the question outstanding.

13 MR. BRODSKY: The question was overruled by the  
14 Court.

15 MS. SMITH: Before --

16 THE COURT: It was before the sidebar.

17 I mean, look. I am concerned that the admonishment  
18 to the jury that they should not be thinking about what  
19 investigations could have been conducted, but weren't, or what  
20 documents or evidence should have been obtained, but wasn't,  
21 or second-guessing the agent's actions, or wondering what  
22 story Mr. Greebel has, but maybe won't tell this jury, okay,  
23 is just opening some very dangerous territory, and I do think  
24 that you would still be able to ask questions of this agent  
25 that would be consistent with a defense that you want without,



## SIDEBAR

1 again, I think opening a Pandora's box of very difficult and  
2 troubling testimony that may require repeated sidebars to try  
3 to sort out. Because I don't know what this agent will say.  
4 I mean, I don't -- you probably know better than I do, but --

5 MR. BRODSKY: I think the government can proffer at  
6 sidebar here what the agent would say.

7 MS. SMITH: We don't know what the agent is going to  
8 say to this question.

9 MR. KESSLER: I don't think -- I don't know -- I  
10 don't think you want to know the answer, frankly.

11 MR. PITLUCK: We don't know.

12 MR. BRODSKY: They have spoken to the agent. They  
13 knew this was coming.

14 MR. KESSLER: Not to tell his story?

15 MR. DUBIN: I think that the way the question was  
16 asked was -- it is a common phrase to say, "What's your side  
17 of the story." It wasn't that he was going to get up and tell  
18 the story, and if it is colloquial use, "did you speak to him  
19 to get his side of the story, his explanation, "which is how  
20 Mr. Brodsky meant it, we can take that part of it out and just  
21 ask prior to arresting him, did you ever speak to him?

22 MS. SMITH: That's fine. That's was our objection.

23 THE COURT: Why don't we just strike the question  
24 and start over. We will strike the question.

25 MR. DUBIN: Withdraw it.

SIDEBAR

1 MR. BRODSKY: Can I withdraw it?

2 THE COURT: Sure. You can withdraw it. That's  
3 better. And then you will ask the question about with respect  
4 to Mr. Greebel. I am very troubled a seed we have tried so  
5 hard to keep out --

6 MR. DUBIN: I think we solved it with a new  
7 formulation.

8 MR. PITLUCK: Judge, on redirect, why didn't you  
9 speak --

10 THE COURT: Sure.

11 MR. PITLUCK: That's --

12 THE COURT: Okay.

13 (Sidebar conference ends.)

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DELZOTTO - CROSS - MR. BRODSKY

1 (Continued on the next page.)

2 (Open court; jury present.)

3 MR. BRODSKY: Your Honor, I will withdraw the  
4 question and rephrase as follows.

5 BY MR. BRODSKY:

6 Q Yes or no, Special Agent Delzotto, the FBI did not  
7 attempt to speak to Mr. Greebel prior to arresting him in  
8 December of 2015; yes or no?

9 A No.

10 Q And, yes or no, Special Agent Delzotto, the FBI did not  
11 attempt to speak with any single partner at Katten Muchin  
12 prior to arresting Mr. Greebel; yes or no?

13 MR. PITLUCK: Objection.

14 THE COURT: I will sustain that objection.

15 BY MR. BRODSKY:

16 Q Yes or no --

17 THE COURT: I sustained the objection.

18 MR. BRODSKY: Yes, Your Honor. I was asking the  
19 next question.

20 THE COURT: Oh, I'm sorry. I thought you were -- I  
21 thought you were prompting him to answer.

22 MR. BRODSKY: No. Sorry.

23 THE COURT: Okay.

24 MR. BRODSKY: That's how I was starting my question.

25 BY MR. BRODSKY:

DELZOTTO - CROSS - MR. BRODSKY

1 Q Yes or no, Special Agent Delzotto, the FBI did not  
2 attempt to speak to anyone at the law firm of Katten Muchin  
3 prior to arresting Mr. Greebel?

4 MR. PITLUCK: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. BRODSKY:

7 Q Yes or no, Special Agent Delzotto, you never spoke to  
8 anyone at Katten Muchin prior to arresting Mr. Greebel in  
9 December 2015?

10 A That wouldn't have made sense, no.

11 MR. BRODSKY: Your Honor move to strike "it would  
12 not have made sense."

13 THE COURT: All right. Sir, he wants a yes or no  
14 answer. So, once again, just yes or no.

15 THE WITNESS: No.

16 BY MR. BRODSKY:

17 Q And, yes or no, Special Agent Delzotto, you did not  
18 attempt to speak to any partners at Katten Muchin, but prior  
19 to arresting Mr. Greebel in December of 2015?

20 MR. PITLUCK: Objection, Your Honor. Asked and  
21 answered.

22 THE COURT: Well, I think the first time it was  
23 asked as whether the FBI. This is directed to whether he --

24 MR. PITLUCK: Yes. Second one was he.

25 THE COURT: He, yes, and the two questions for both

DELZOTTO - CROSS - MR. BRODSKY

1 partners and whether Agent Delzotto did, was directed at first  
2 partners at Katten and then anyone at Katten. So I think it  
3 is a separate question. If you want to object to it, that's  
4 fine. If you don't --

5 MR. PITLUCK: Objection.

6 THE COURT: You are objecting to this question as  
7 well?

8 MR. PITLUCK: Yes.

9 THE COURT: All right. I will sustain this  
10 question -- the objection.

11 BY MR. BRODSKY:

12 Q Yes or no, Special Agent Delzotto, you did not attempt to  
13 speak to any of Mr. Greebel's former partners at Katten Muchin  
14 prior to arresting Mr. Greebel in December of 2015?

15 MR. PITLUCK: Objection, Your Honor.

16 THE COURT: Sustained.

17 MR. BRODSKY: Is that to the form, Your Honor? Is  
18 there --

19 THE COURT: Well, based on our sidebar and  
20 discussions that we had, I am a little bit, also, confused by  
21 the term "former partners." Do you mean at the time or now  
22 or --

23 MR. BRODSKY: Okay.

24 BY MR. BRODSKY:

25 Q Yes or no, Special Agent Delzotto, prior to arresting

DELZOTTO - CROSS - MR. BRODSKY

1 Mr. Greebel, you did not attempt to speak to any person who  
2 was a partner of Mr. Greebel and left the firm of Katten prior  
3 to your arrest of Mr. Greebel?

4 MR. PITLUCK: Objection, Your Honor.

5 MR. BRODSKY: I will rephrase, Your Honor. I will  
6 try --

7 THE COURT: I am trying to follow the question.

8 MR. BRODSKY: I will try a better question.

9 BY MR. BRODSKY:

10 Q Yes or no, Special Agent Delzotto, prior to arresting  
11 Mr. Greebel, you did not attempt to speak to any person who  
12 worked as a partner at Katten Muchin, but left the firm before  
13 you arrested Mr. Greebel?

14 MR. PITLUCK: Objection, Your Honor.

15 THE COURT: I think you need to make a more specific  
16 question. I'm just going to sustain on the basis of form.

17 MR. BRODSKY: My apologies.

18 (Short pause.)

19 BY MR. BRODSKY:

20 Q Prior to -- yes or no, Special Agent Delzotto, prior to  
21 arresting Mr. Greebel in December of 2015, you did not attempt  
22 to speak to any current, then current, or then former employee  
23 at Katten Muchin?

24 MR. PITLUCK: Objection.

25 THE COURT: I will overrule that objection. You may

DELZOTTO - CROSS - MR. BRODSKY

1 answer the question.

2 THE WITNESS: No.

3 BY MR. BRODSKY:

4 Q And prior to arresting Mr. Greebel, yes or no, Special  
5 Agent Delzotto, in December of 2015, you did not obtain a  
6 single piece of paper from the law firm of Katten Muchin?

7 MR. PITLUCK: Objection, Your Honor.

8 BY MR. BRODSKY:

9 Q Yes or no?

10 THE COURT: I will overrule that objection.

11 THE WITNESS: Anything dealing with Katten Muchin --

12 MR. BRODSKY: Your Honor, this is a yes or no  
13 question. It didn't call for explanation. I would ask to  
14 move to strike that and ask yes or no.

15 THE COURT: Well, are you asking whether he  
16 personally received or obtained papers from Katten?

17 MR. BRODSKY: My question was you.

18 THE COURT: Whether he personally?

19 MR. BRODSKY: "You" is Special Agent Delzotto.

20 THE WITNESS: I am trying to answer.

21 THE COURT: Well --

22 MR. BRODSKY: I can take it step by step,  
23 Your Honor. My question didn't call for an explanation. It  
24 was a yes or no question.

25 THE COURT: If you can answer it yes or no, please

DELZOTTO - CROSS - MR. BRODSKY

1 do so.

2 THE WITNESS: It really requires me to explain a  
3 little bit more.

4 BY MR. BRODSKY:

5 Q Prior to arresting -- Special Agent Delzotto, prior to  
6 arresting Mr. Greebel, isn't it a fact, sir, that you, you  
7 personally, never obtained a single piece of paper from the  
8 law firm of Katten Muchin; yes or no?

9 A Me personally, no.

10 Q Prior to arresting Mr. Greebel in December of 2015, you  
11 never observed any FBI agent attempt to obtain a single piece  
12 of paper from the law firm of Katten Muchin --

13 MR. PITLUCK: Objection, Your Honor.

14 BY MR. BRODSKY:

15 Q -- yes or no?

16 THE COURT: I will overrule that objection. It is  
17 what he personally observed.

18 Did you observe?

19 THE WITNESS: Observe? When you say "observe," what  
20 do you mean?

21 BY MR. BRODSKY:

22 Q You testified, sir, on direct examination, I think,  
23 within minutes of starting your testimony, your sworn  
24 testimony under oath, that you were the lead investigative  
25 agent in this case; yes or no?



DELZOTTO - CROSS - MR. BRODSKY

1 A One of two leads.

2 Q One of two lead investigators?

3 A Correct.

4 Q And I take it, sir, as one of the two lead investigative  
5 agents, before a request is made by any members of the FBI  
6 team, to Katten Muchin, you would know about it; yes or no?

7 MR. PITLUCK: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. BRODSKY:

10 Q When I ask you about your observations, Special Agent  
11 Delzotto, I am asking you what you personally saw, with your  
12 own eyes, or you observed another agent doing, writing some  
13 subpoena out or writing out a document request. So --

14 MR. PITLUCK: Objection, Your Honor.

15 THE COURT: Well, let him finish.

16 MR. PITLUCK: I thought --

17 BY MR. BRODSKY:

18 Q With that definition in mind, prior to arresting  
19 Mr. Greebel in December of 2015, isn't it a fact that you  
20 never observed any FBI agent, as one of the two lead  
21 investigative agents on the team, requesting documents from  
22 the law firm of Katten Muchin?

23 MR. PITLUCK: Objection, Your Honor.

24 THE COURT: I will overrule that objection, to the  
25 extent he is asking for the agent's personal observations.

DELZOTTO - CROSS - MR. BRODSKY

1 THE WITNESS: Everything that had to do with Katten  
2 Muchin went through Eastern District of New York because it  
3 was a law firm.

4 BY MR. BRODSKY:

5 Q So is the answer, sir, you, your personal observations,  
6 you never observed any request being made by the FBI team to  
7 the law firm of Katten Muchin, yes or no, prior to arresting  
8 Mr. Greebel in December of 2015?

9 A Me, personally, I don't recall that because Eastern  
10 District was handling that.

11 Q And at the time that Mr. Greebel was arrested, you  
12 understood, sir, yes or no, that some of the associates at  
13 Katten Muchin who worked on Retrophin matters had left the law  
14 firm; yes or no?

15 A I don't recall at that time what I knew about who left  
16 and when they left, and I'm sure some people left. I don't  
17 know that for a fact.

18 Q Isn't it fair to say, sir, that when Mr. Greebel was  
19 actually arrested he waived his rights and spoke to --

20 MR. PITLUCK: Objection, Your Honor.

21 BY MR. BRODSKY:

22 Q -- the FBI?

23 MR. PITLUCK: Objection, Your Honor. Move to  
24 strike.

25 THE COURT: I think I'm going to ask for a sidebar

DELZOTTO - CROSS - MR. BRODSKY

1 at this point, please. Excuse me.

2 (Sidebar conference.)

3 (Continued on the next page.)

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## SIDEBAR

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(WHEREUPON, the following proceedings were had at sidebar, out of the hearing of the open courtroom, to wit:)

4

MR. KESSLER: The record should reflect the smiling of the defense bar as they walked over here, knowing that question was improper.

7

MR. DUBIN: Absolutely not, Your Honor.

8

MR. BRODSKY: It was not --

9

MR. CHAN: Jesus Christ.

10

THE COURT: Don't do that.

11

Mr. Dubin complained about the government laughing at some comment he made. He's putting things on the record. It is unfortunate you guys have devolved to this level of advocacy on behalf of your clients. It doesn't serve anyone well.

16

MR. BRODSKY: Your Honor, just --

17

THE COURT: I don't appreciate cursing in my courtroom. I am not a religious person, but I don't think yelling "Jesus Christ" at sidebar is a good thing, Mr. Chan. And I really think everyone needs to grow up and become more professional because this is getting intolerable.

22

MR. BRODSKY: I will move on then to the substance, Your Honor.

24

The agent with his answer, his speaking answers, has suggested that a decision to go subpoena documents or obtain

25

## SIDEBAR

1 documents or go talk to anybody at the law firm of Katten  
2 Muchin who no longer worked there is not something the FBI  
3 decided to do. And I believe that created the impression, an  
4 impression was being created that there's a view -- well, when  
5 Mr. Greebel spoke to the FBI, and he waived his rights twice,  
6 once signing it -- once in verbally, and once signing it.

7 They told him that Retrophin had waived the  
8 privilege. And they proceeded to ask -- he asked about it.  
9 As Your Honor may recall from the post arrest statements, he  
10 asked them on multiple occasions, "Can I talk about the  
11 subject? Is the privilege waived?" And they said yes.

12 And then he proceeded to be asked about MSMB, his  
13 work for MSMB, his work on the consulting agreements, his work  
14 on the settlement agreements. And Your Honor saw multiple  
15 settlement -- statements that the government wanted to admit  
16 into evidence.

17 So my view is, that knowing that the government is  
18 going to elicit, "Hey, we couldn't go talk to him because of  
19 some procedural issue with Judge Weinstein or some order," and  
20 he's already -- I didn't point it out, Your Honor, but when he  
21 answered those questions, he was directly looking at the three  
22 prosecutors sitting at the prosecution table.

23 THE COURT: But witnesses do that all the time.

24 MR. BRODSKY: I understand. I understand.

25 THE COURT: You know.

## SIDEBAR

1 MR. BRODSKY: But my view is, Your Honor, that  
2 knowing that the government is going to elicit that he --  
3 there was some preclusion or bar because of crime fraud or  
4 attorney-client privilege that prevented them from speaking to  
5 people at Katten, and knowing that that is undercut and  
6 undermined completely by the fact that when they arrested him,  
7 they expressly told him, Special Agent Braconi, the privilege  
8 is waived, and you can talk about all these subjects.

9 So my view is, when they -- on the day they arrested  
10 Mr. Shkreli, or the day before or two days before or the very  
11 same day, they could have gone to him. And instead of, what  
12 they did, Your Honor, was knocking on his -- not -- they  
13 knocked on his door, nine agents. They arrested him in front  
14 of his three children who are sleeping, and one woke up. His  
15 wife was there.

16 And instead of all that taking place, they brought  
17 him down in handcuffs, they told him the privilege was waived,  
18 and they asked him all sorts of questions. Nothing prevented  
19 him on the day of arrest from saying, "Would you speak with  
20 us," and going through the whole thing and saying Retrophin  
21 waived and then eliciting all the same statements.

22 And so our view is there is no -- there is no basis  
23 to argue that they could not have done that. My question,  
24 the -- my foundation for my question is based on the fact that  
25 the government has proffered that they are going to elicit

SIDEBAR

1 from this witness that there was a block, because of  
2 privilege, because of crime fraud, because of other reasons,  
3 to getting statements from Mr. Greebel.

4 And in light of the fact on the day of his arrest  
5 they had no block or nothing preventing them from eliciting  
6 those statements, I believe I am allowed to elicit that they  
7 spoke to him, he waived his rights, and they told him  
8 Retrophin waived the privilege, and he spoke about all the  
9 subjects.

10 And, in addition, I believe evidence of waiving your  
11 rights -- I am not getting into the content of what he said.  
12 Of course I can't do that. That's all hearsay. But waiving  
13 your right, agreeing to speak, is consciousness of innocence.  
14 And I believe there's case law supporting me that I can elicit  
15 that if there was some objection on that basis.

16 So for those reasons, Your Honor, I think my  
17 question is permissible, and I am allowed to cross-examine the  
18 agent about this.

19 MS. SMITH: So, I have a number of things to say.  
20 One, I have no idea why this wasn't brought up prior to asking  
21 this question. And we need to actually speak to our appeals  
22 division because I am very concerned about what we are allowed  
23 to do on redirect, and as a result, what objections we can be  
24 making now with respect to what Mr. Greebel did or didn't do  
25 or say or didn't say.

## SIDEBAR

1           And so I am shocked, frankly, that this is coming up  
2 here. Defense counsel knows that this witness was not, in  
3 fact, at the arrest of Mr. Greebel, and so he's not, in fact,  
4 an appropriate -- or the interview. So he's not, in fact, an  
5 appropriate person to be testifying to what Mr. Greebel was  
6 told or not told on the day of the interview.

7           He also knows that Retrophin, in fact, waived with  
8 respect to certain subjects, and that we sought the crime  
9 fraud ruling to make sure, because Mr. Shkreli had a separate  
10 privilege, that's part of the intricacy, and I do think the  
11 agent, not being a lawyer, it's difficult for him to say that  
12 necessarily, maybe as nuanced a form as a lawyer would, but  
13 there were multiple steps that were taken with respect to what  
14 was said to Mr. Greebel when he was arrested. Again, this is  
15 the wrong individual. This suggestion is that he was told  
16 things with respect to certain topics, which gets into the  
17 contents of the interview.

18           And I have not seen the case law that Mr. Brodsky is  
19 proffering for the first time at sidebar that suggests that he  
20 can ask whether or not the defendant waived his rights and  
21 spoke to the government, and, then, frankly, what is the scope  
22 of our redirect on that. Because, again, I'm worried that's  
23 what's happening is the same thing with the story, we are  
24 opening the door with Mr. Greebel had this story to tell, and  
25 he spoke on these subjects and took this long, and we can't



## SIDEBAR

1 cross because we can't -- you know, we're unable to -- we have  
2 a right to put in his statements or not put them in, and we  
3 have to be able to talk about what Mr. Greebel did or didn't  
4 do. For example, there were points at which Mr. Greebel said  
5 that he was considering an innocence proffer, and then he  
6 didn't come in. I don't know -- I want to be very careful  
7 about what we suggest happened afterwards. If we want to talk  
8 about timing, there were proffers that were being made at  
9 different points by agents of his. And so, you know, if we're  
10 going to get into this, first of all, again, I think it is  
11 completely inappropriate the way it was asked. It is the  
12 wrong witness, even if it was appropriate. I am worried about  
13 the Pandora's box we talked about, and I also, since I have  
14 never heard this argument before, I don't know what case law  
15 Mr. Brodsky is referring to with respect to being able to ask  
16 this question. We need to look into it so we have a sense of  
17 what we -- what our objections can be, or not be. I am not  
18 sure that what the circumstances are, or other people are able  
19 to say, you know, was Mr. Greebel, did he waive his rights  
20 when interviewed. If he has the case law, we can take a break  
21 and look at it and speak to appeals division. But this is a  
22 unique argument, they briefed putting the investigation under,  
23 you know, under a microscope, but not with any of the  
24 specificity. This is all stuff that could have been hashed  
25 out ahead of time.

## SIDEBAR

1 MR. BRODSKY: Your Honor, his answers to the  
2 questions, and government's proffer at sidebar, about what he  
3 would say in response to an explanation is what prompted me to  
4 ask that question. It was not a planned event or planned  
5 question. And that's what often happens on cross-examination.

6 I listened to the agent's testimony, I listened to  
7 the government's proffer, I put two and two together and I  
8 thought to myself, they are going to get up and say, there's a  
9 block that prevented him from going to talk to Mr. Greebel  
10 prior to arrest, and they are going to suggest it was a  
11 privilege issue, whether it was Mr. Shkreli or somebody else.  
12 And the reality is there's zero block because when Shkreli was  
13 arrested, Retrophin had waived the privilege --

14 THE COURT: Have you already said this?

15 MR. BRODSKY: Yes.

16 THE COURT: Don't repeat.

17 MR. BRODSKY: I don't think you have to confer with  
18 appeals. There's time --

19 THE COURT: Okay.

20 MR. BRODSKY: Take it question by question. I think  
21 we should proceed with cross-examination, not take a break  
22 now, Your Honor, and interrupt the flow of the  
23 cross-examination.

24 MS. SMITH: It is the wrong witness, first of all.  
25 He knows that.

## SIDEBAR

1 THE COURT: This witness did not interview him after  
2 his arrest, did not administer rights; is that right?

3 MR. BRODSKY: Yes, Your Honor.

4 MS. SMITH: He was not there at the house. So if we  
5 are going into what was happening at the house, all the stuff  
6 he's talking about, it's the wrong witness, as a first step.

7 MR. BRODSKY: He's the colead investigative agent,  
8 and so he knows firsthand Mr. Greebel was arrested that day  
9 because he was in court that day. He knows firsthand  
10 Mr. Greebel had waived his rights. He's the lead  
11 investigative agent who knows that statements were made. It  
12 is beyond question that as a lead investigative agent, he just  
13 put in a series of e-mails that the government presented to  
14 him, that he didn't personally obtain, but he was allowed to  
15 put them in and read them, and talk about them, because he's  
16 the colead investigative agent.

17 THE COURT: Because they were admissible.

18 MR. BRODSKY: He was allowed to testify as to  
19 certain things because he's a colead investigator, and the  
20 number of people he interviewed, he testified about other  
21 things, Your Honor, because he's colead investigative agent.  
22 And that is when you put on the colead investigative agent,  
23 that is permissible for cross-examination.

24 He knows. It is not -- let's not pretend. I am not  
25 asking bad faith questions. I am asking a valid good faith

## SIDEBAR

1 question we all know about. I am not going to the content of  
2 what Mr. Greebel said post arrest. I know that's hearsay.

3 THE COURT: Let the government finish.

4 MR. PITLUCK: Your Honor, I'm trying to just take  
5 this back a step. We didn't proffer anything about what he  
6 was going to say. We said it opened doors, and we don't know  
7 exactly what he's going to say. Mr. Brodsky has now used this  
8 to ask a legally impermissible question about the fact that --  
9 did he waive his rights and did he speak to the agent.

10 First of all, he wasn't there. Second of all, he's  
11 anticipating what he thinks a witness might say on redirect to  
12 open the door to ask this question about the post arrest  
13 interview where no statements came in, to then use it to argue  
14 that you didn't hear any statements from the government, but  
15 you know there was a post arrest interview, and you know he  
16 answered questions. The implication is he exonerated himself  
17 and he's innocent.

18 We have looked at this. This has been addressed  
19 numerous times in our statements we put in. We chose not to  
20 do it. So you can't open the door and say, in your post  
21 arrest interview he said things, and you didn't hear any of  
22 them. This is -- first of all, improper basis to ask an  
23 improper question. Second of all, it's the improper witness  
24 to ask it in front of. Third of all, we think it is legally  
25 impermissible to raise the issue of a post arrest interview,

## SIDEBAR

1 when the government has not put any -- any evidence that such  
2 a post arrest interview existed or any statements thereof.  
3 They don't get to bootstrap this evidence in.

4 MS. SMITH: What's the cases?

5 MR. BRODSKY: There is a well known defense of  
6 consciousness of innocence. And when they -- we have a  
7 perfectly valid basis, Your Honor, that, of course, the  
8 government can argue otherwise, but a lawyer, who very well  
9 knows his rights, who is verbally asked, will you waive your  
10 rights.

11 THE COURT: Give us the case that you are relying  
12 on.

13 MR. BRODSKY: I would like to see it.

14 MR. PITLUCK: I would like to see it --

15 MR. KESSLER: I'd love to read it.

16 MR. PITLUCK: -- consciousness of innocence allows  
17 you to circumvent --

18 THE COURT: I don't want to make legal error that's  
19 going to cause anything to have to be redone.

20 MR. BRODSKY: Yes, Your Honor.

21 THE COURT: I would like to --

22 MR. BRODSKY: I never saw this case. Ms. Rubin has  
23 a case back there.

24 MR. KESSLER: Specifically, it is not a case that  
25 says consciousness of innocence, it's a case that says a

## SIDEBAR

1 defendant can introduce the fact that he waived his rights and  
2 agreed to speak to the government as evidence of --

3 MR. PITLUCK: Based on consciousness of innocence.

4 MS. SMITH: That's number one. And, number two, he  
5 would need to have individuals actually present at the  
6 interview who can say what Mr. Greebel was or was not told,  
7 assuming hearsay statements are appropriate in the first  
8 place. We do need to take a break, we need to see what the  
9 case is.

10 THE COURT: We can take a break. I am not  
11 interested in having, you know, walking into a buzz saw here,  
12 you or defense or the government, or the Court in making  
13 rulings that might need more careful consideration.

14 MR. KESSLER: I'm happy to read whatever Second  
15 Circuit cases --

16 THE COURT: There are cases we can look at.

17 MR. BRODSKY: I didn't know I was going to do this.

18 THE COURT: You said there are a lot of cases.

19 MR. BRODSKY: I know that generally.

20 THE COURT: Okay. Maybe one of your colleagues.

21 MR. BRODSKY: We will look it up now.

22 THE COURT: All right.

23 MS. SMITH: And we will call our appeals division  
24 and speak to them again. This would not be the right witness  
25 to do this anyway, and Mr. Brodsky is well aware of that.

## SIDEBAR

1 THE COURT: Maybe you want to call some other agent  
2 who is present.

3 MR. PITLUCK: It is not appropriate to talk about  
4 the post arrest interview. There's no evidence of that in the  
5 record. It is irrelevant.

6 MS. SMITH: I was making the point, Mr. Brodsky  
7 knows that this witness was not present when Mr. Greebel was  
8 arrested, so all this discussion about what happened at the  
9 house and everything else, which is completely inappropriate  
10 anyway, and we briefed that ahead of time, you know, this  
11 would be the wrong witness. So that is our concern with the  
12 way the question is asked, as if this witness was present,  
13 which leaves the impression with the jury anyway. But the  
14 second level is that the concern about being able to ask the  
15 question at all. So we will take a look at the cases that  
16 Mr. Brodsky has cited, Second Circuit cases, when he gives  
17 them to us, and we can address any of the other issues after  
18 the break as well.

19 THE COURT: All right.

20 MR. KESSLER: Give the jury a break.

21 THE COURT: The jury today is able to sit until  
22 5:30. It would be a shame not to use all the time that they  
23 are able to sit. So I think I will give them a mid-afternoon  
24 break.

25 MR. KESSLER: It sounded like they had some cases

SIDEBAR

1 ready. We will call our appeals now.

2 MS. SMITH: Once we have the case.

3 THE COURT: Good.

4 (Sidebar conference ends.)

5 (Continued on the next page.)



## PROCEEDINGS

1 THE COURT: Members of the jury, I'm going to give  
2 you a mid-afternoon break at this point. Please don't discuss  
3 the case. And we'll come and retrieve you when the time is  
4 appropriate. There are some issues we need to resolve.

5 (Jury exits the courtroom.)

6 (Whereupon, the witness steps down.)

7 THE COURT: Let's take a 15-minute break.

8 (Recess.)

9 (In open court outside the presence of the jury.)

10 THE COURT: Will the parties get me up-to-date where  
11 you stand. You've spoken to your appellate folks and the  
12 defense has provided the case United States Versus Mario  
13 Biaggi, 909 F.2d 662.

14 MR. PITLUCK: We proffer Biaggi for our position.  
15 But there is other case law, United States Versus Demosthene,  
16 United States Versus Marin, that say defendant introducing his  
17 post-arrest statement simply for the fact that it was made,  
18 shows that it must be, there must some be relevance in the  
19 fact that it was made to an issue.

20 The example given in Demosthene, the fact that a  
21 post-arrest statement was made, if the issue is, if the person  
22 who made it was asleep, basically saying the mere fact that  
23 something was said is relevant to an issue, the relevant issue  
24 in the case. Biaggi has not been extended to much of  
25 anything, certainly not to somebody making statements to law

## PROCEEDINGS

1 enforcement. That was, as the Court is aware, a very narrow  
2 case related to an offer of immunity.

3 THE COURT: Right.

4 MR. PITLUCK: And Demosthene itself says even plea,  
5 rejection of a plea, not ruling on it, subsequent cases in the  
6 Second Circuit said plea negotiations are not consciousness of  
7 innocence. This is a narrow opinion that certainly does not,  
8 in our view apply to a stand where somebody waives Miranda and  
9 makes a statement.

10 The number one overarching point that we asserted  
11 from the beginning is Special Agent Delzotto is not present at  
12 the interview. He was not present at the arrest. Anything  
13 that he has to say about that was learned elsewhere, it's  
14 hearsay.

15 But even going beyond that, the defense does not get  
16 to put in the fact that he was interviewed and that he  
17 answered questions and he waived Miranda, because it's not  
18 relevant. The statements -- and statements aren't coming in.  
19 There is no relevance.

20 People waive Miranda all the time and make  
21 statements. There is nothing probative about that. Your  
22 Honor, we obviously we object to Special Agent Delzotto being  
23 asked the question primarily for the hearsay reason and for  
24 the impropriety there is not a shred of case law that says  
25 that this is appropriate through any witness. There is no 106

## PROCEEDINGS

1 issue, no rule of completeness.

2 Like most of the cases, as your Honor is aware, they  
3 are seeking, defendant is seeking to admit parts that the  
4 Government did not. This is simply trying to raise the  
5 specter that the defendant was interviewed and answered  
6 questions and waived Miranda without putting in the  
7 statements. And that we believe that's improper.

8 Because there is only one inference to be taking  
9 away from that, if you didn't hear he made statements, you  
10 didn't hear anything, is only one inference, which is not the  
11 correct inference in our view, but it's the Government's  
12 decision whether to introduce the statements.

13 THE COURT: Mr. Brodsky.

14 MR. BRODSKY: Yes, your Honor, we believe that  
15 United States Versus Biaggi 909 F.2d 662-1990 in the Second  
16 Circuit is squarely on point in the lead case in the Second  
17 Circuit for deciding whether an individual accused of a crime  
18 takes certain actions, whether there is evidence of  
19 consciousness of guilt. It is squarely on all points, because  
20 what the Court says is, quote, "In that case Mr. Mariotta had  
21 a defense that he didn't have any, that the Government had  
22 failed to prove his state of mind, his knowledge about the  
23 alleged bribes that he placed. The Second Circuit points out  
24 that was squarely at issue and that the evidence about those  
25 alleged it bribes, what Mr. Mariotta knew about the bribes was

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1 in conflict. That there was cooperating witnesses who claimed  
2 Mr. Mariotta knew that the credibility of those cooperating  
3 witness were in question."

4 Here the evidence is better for us and, the defense,  
5 than Mr. Mariotta's defense. There were cooperating witnesses  
6 in that case who testified Mr. Mariotta had knowledge of  
7 bribes. Here the Government is principally relying, in fact I  
8 would say entirely relying, on a set of inferences through  
9 e-mails and testimony as undercut they can argue.

10 But state of mind of Mr. Greebel and what he knew  
11 and didn't know, and whether Mr. Shkreli lied to him or didn't  
12 lie to him, used him like a pawn or instrument, is squarely at  
13 issue in the case, in that effected the court deeply in US V.  
14 Biaggi.

15 What the Court said in Biaggi, they were faced with  
16 a situation where Mr. Mariotta was offered immunity if he told  
17 the Government what the Government would regard as truthful  
18 information. He did not have information that the Government  
19 wanted because and he disagreed with the Government's  
20 characterization s of facts. And the Court went on to say  
21 that even there was a dispute over whether or not  
22 Mr.Mariotta's decision to reject immunity was how he was  
23 incentivized or whether or not he -- the evidence relating to  
24 it, what the jury, what the inferences should be drawn from  
25 it. The Court went on to say, there is a consciousness of

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1 innocence defense, particularly when state of mind is at play.

2 It stated the following, your Honor. It said,  
3 quote, "The probative force of a" --

4 THE COURT: What page are you on, please?

5 MR. BRODSKY: On page 691, first full paragraph,  
6 "The probative force of a rejected immunity offer is clearly  
7 strong enough for rendering it relevant. As Dean Wigmore has  
8 written, this is the quote, "Let the excused whole conduct  
9 come in; and whether it tells the for conscientiousness of  
10 guilt or for conscientiousness of innocence, let us take it  
11 for what it is worth, remembering that in either case it is  
12 open to varying explanations and is not to be emphasized. Let  
13 us not deprive an innocent person, falsely accused, of the  
14 inference which common sense draws from a consciousness of  
15 innocence and it's natural manifestations," end quote. That  
16 is cited to Wigmore on Evidence, Section 293.

17 The Court went on to say that they reversed the  
18 convictions. They had to determine whether or not this error  
19 that the Government had precluded based on the Government's  
20 request to this Court, and that the Court granted the  
21 Government's request of preclusion, the Court went on to say  
22 they had to determine whether this error was enough to reverse  
23 the convictions. And the Court decided with that heavy weight  
24 of getting a reversal of convictions, that it certainly was.

25 And so your Honor, in this case what we have, if you

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1 compare Mr. Mariotta's decision to reject immunity, he was  
2 incentivized to give the Government information in exchange to  
3 get immunity. And here we have a situation where Mr. Greebel  
4 is arrested, a lawyer which is particularly important that  
5 he's a lawyer who knows his rights. He waives his rights.  
6 And he decides that despite knowing my rights, I'm going to  
7 written waiver, I'm going to orally waive, and I'm going to  
8 speak to the FBI as long as they want, as long as they want.

9           They kept saying, he kept saying, well, I should  
10 call a lawyer. At one point he said I should call a lawyer.  
11 They said to him during the interview, do you want to waive  
12 your rights, he left a message with a lawyer. He didn't know  
13 he was under investigation. He left with a message with this  
14 lawyer colleagues he said, I need a lawyer. And they said,  
15 you want to stop? He said, no, I'll continue to answer  
16 questions.

17           And Dean Wigmore's words of wisdom, which the Second  
18 Circuit adopted, are squarely on all points. Could there be  
19 anything more important than having evidence of a  
20 consciousness of innocence of a person falsely accused, there  
21 is a presumption of innocence, not guilt, a person who is  
22 falsely accused of a crime, waives their rights to a lawyer,  
23 and agrees to speak to the FBI. What is wrong with us arguing  
24 to a jury the power and probative value of that?

25           The Government may argue equally, as they did in

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1 Mariotta, that you can't draw any conclusion from it  
2 whatsoever. And that it's evidence that he was just doing  
3 other things, other motives.

4 But just because the Government is skeptical about  
5 it, or have their own views about it, or is presuming or  
6 believing in their case, let's not deny a person accused, we  
7 believe falsely, of a crime the opportunity to demonstrate  
8 consciousness of innocence by speaking when questioned by the  
9 FBI after arrest.

10 Remember, the conditions of the arrest are relevant.  
11 You're dragged out of your home. There are multiple FBI  
12 agents who stop in the street. They come into your home six,  
13 6:30 in the morning, your kids are sleeping. They put guards  
14 outside your kids doors. All of that is relevant, because in  
15 that state of mind most people would be frenzied. They  
16 wouldn't be speaking to the FBI.

17 But he gets arrested in front of his wife. And he  
18 gets taken to the FBI headquarters. The only thing he's  
19 thinking is I will waive my rights, I will speak to them, I am  
20 innocent, I did nothing wrong. There is nothing more powerful  
21 than that. That should be admitted into evidence.

22 There was another citing in Biaggi. Judge Buchwald,  
23 in the Southern District was confronted with a different  
24 situation, but similar evidence of consciousness of innocence,  
25 that the Government refused and argued against the admission

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1 of. In that case, Rengan Rajaratnam -- I was not involved in  
2 the prosecution of this case, I did not participate in the  
3 trial. So I'm not giving you other information related to the  
4 trial that I have personal knowledge of. Rengan Rajaratnam at  
5 trial, I was outside of the office when this trial took place.

6 Rengan Rajaratnam was in Brazil at the time of the  
7 charges. And said I'm coming back. I'm coming back to face  
8 the charges. The Government made all sorts of allegations and  
9 suggestions that he was coming back for other motives, he was  
10 trying to plead, he was never going to truly come back.

11 Judge Buchwald rejected all of that, relying on  
12 Biaggi saying this is evidence of innocence. And yes, the  
13 Government has counter evidence that he had other motives to  
14 come back or to do other things. But that doesn't take away  
15 from the fact that he had had evidence of innocence that he  
16 was returning. Now the Government cites --

17 THE COURT: I'll tell you what my concern is, I  
18 think the discussion that I'm seeing that could be problematic  
19 between this case and the Rengan Rajaratnam case and Biaggi,  
20 Biaggi involved an immunity. The other case that you were  
21 involved in, involved someone returning voluntarily from  
22 abroad. This is a question that was posed about waiving one's  
23 Fifth Amendment right. So he has a Fifth Amendment right as  
24 of the time he's arrested, that he waives. He has a Fifth  
25 Amendment right at trial not to testify.



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1 MR. BRODSKY: Yes, your Honor.

2 THE COURT: I'm concerned that there is some  
3 undermining of the Fifth Amendment privilege against  
4 self-incrimination that we've hammered into the jury at jury  
5 selection and we'll do that again with the instructions. I  
6 don't know, I mean, if, I'm saying if Mr. Greebel is  
7 convicted, whether we'll get post-trial motions for ineffective  
8 assistance because this was put up before the jury.

9 The Government is the one usually who makes the  
10 mistake of inadvertently or deliberately expecting that  
11 somehow a defendant should have some burden to speak or  
12 explain himself.

13 And the Courts have been very swift about condemning  
14 that. Here we have a defendant, through his counsel, who is  
15 making an argument that the waiver of the Fifth Amendment  
16 right is indicative of innocence.

17 I don't know what Mr. Greebel is going to do here at  
18 this trial, but if he decides not to testify, whether or  
19 not -- I know the Government would not argue this, but by  
20 couching this in terms of a waiver of Fifth Amendment  
21 privilege, post-arrest, will the jury be tempted to find or to  
22 wonder whether or not the adverse or the converse conclusion  
23 or inference should be drawn if Mr. Greebel doesn't testify.  
24 That's my concern, maybe that's not anybody else's concern.

25 MR. BRODSKY: Our view on it is that in this

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1 particular circumstances with Mr. Greebel and being a lawyer,  
2 his waiver is consciousness of innocence and fits within  
3 Biaggi and its progeny.

4           The fact that he does not -- let's assume we put on  
5 a case, and let's assume Mr. Greebel makes the decision and  
6 decides not to testify, the decision not to waive your rights  
7 is not consciousness of guilt. I'm not suggesting that  
8 anybody who will argue or imply to the jury or suggest to the  
9 jury, and we're relying very heavily, and if Mr. Greebel  
10 decides not to testify that the decision made not to testify,  
11 there will be a very strong instruction that, and there is a  
12 long tradition of it, that if you decide not to testify then  
13 not implication cannot be drawn.

14           There are many criminal cases in which defendants  
15 waive their rights and they testify or waive their rights  
16 post-arrest and they give statements and the statements are  
17 given. And in those cases there is no suggestion if the  
18 defendant doesn't testify that there was somehow an  
19 implication that Fifth Amendment, undermining Fifth Amendment  
20 privilege.

21           We believe strongly that the jury, given how clear  
22 your Honor's instruction will be on how a person's decision  
23 not to testify cannot be, nothing can be drawn from it. If  
24 Mr. Greebel decides not to testify, if we put on a defense  
25 case, then we are, we have no issue with it. We don't think

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1 the jury will draw a problem from it. We don't think the jury  
2 will draw an adverse inference against Mr. Greebel.

3 On the contrary, one could argue that having been  
4 arrested and having waived his rights that was consciousness  
5 of innocence and that will enable us to tell the jury that in  
6 a moment when a lawyer knows his rights and he spoke and  
7 agreed to speak to the FBI, then that should be evidence of  
8 innocence.

9 Now U.S. V. Demosthene, that the Government cites,  
10 334 F. Supp. 2d 378, the District Court case in the Southern  
11 District 2004, is simply not on point in that case as I read  
12 the case. The defendant was trying to, a person accused of a  
13 crime is trying to admit his post-arrest statements, he was  
14 trying to admit the content of them. He said he fell under an  
15 exception to the hearsay rules that he was arguing under the  
16 rules of evidence of 801.

17 We're not trying to admit the content at all. We  
18 understand the content of Mr. Greebel's statements is hearsay  
19 and inadmissible by us. The cite to Demosthene is not  
20 relevant. I haven't completed my reading of the Marin case,  
21 I'm happy to do so.

22 THE COURT: No, unless you want to do it. I think  
23 we've kept the jury out for an hour.

24 Mr. Pitluck, did you want to be heard?

25 Let's first address the fact that this is not the

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1 appropriate witness who will be able to establish that  
2 Mr. Greebel did in fact make an oral and written Miranda  
3 waiver and he nonetheless spoke to the FBI. He's not the  
4 right witness. He was not there. He did not take the  
5 statement. He did not obtain waivers and did not administer  
6 the Miranda warning. I really doubt that this is the right  
7 witness for that purpose and he doesn't have any knowledge of  
8 it.

9 (Continued following page.)

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2 MR. BRODSKY: Your Honor, respectfully as the  
3 co-lead investigative agent on the case, he has direct  
4 knowledge that Mr. Greebel waived his rights and made  
5 statements and the fact -- the most important thing, as we all  
6 know when the government goes out and arrests somebody and  
7 they try to get statements, the one thing they all plan to do  
8 is, particularly with somebody who is unrepresented, is they  
9 make a plan, a joint plan and they try to figure out, are you  
10 represented by counsel. If they're not represented by  
11 counsel, which means they had knowledge -- they had no  
12 knowledge Mr. Greebel was represented by counsel in this  
13 matter because he did have counsel, didn't know he was under  
14 investigation, when they made a plan, because that is standard  
15 operating procedure at the FBI and the U.S. Attorney's Office,  
16 not knowing that he has counsel, they laid out a plan to ask  
17 him to waive his rights, had the paper prepared to get his  
18 statements. And that is the plan that the co-lead case agents  
19 would have been aware of. And once there is a waiver of  
20 rights and somebody speaks, unquestionably, Mr. Delzotto was  
21 there during the arrest proceedings of Mr. Shkreli and he was  
22 present, we believe, in Court when Mr. Shkreli was arrested --  
23 when Mr. Shkreli was presented for arraignment,  
24 unquestionably, as a co-lead case agent his personal knowledge  
25 that Mr. Greebel waived his rights and Mr. Greebel made

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1 statements and I don't think the government can deny that.

2 He doesn't have to be present in the room to have  
3 personal knowledge that Mr. Greebel waived his rights and gave  
4 statements. There is an arrest form that's a business record  
5 of the FBI, there's a form that they use that's standard  
6 operating procedure and, undoubtedly, Mr. Delzotto -- Special  
7 Agent Delzotto has known of this fact since the day of  
8 Mr. Greebel's arrest.

9 MR. PITLUCK: Judge, I'm not aware of a hearsay  
10 exception for co-lead case agent. Miranda forms come in as  
11 statements of the defendant, not business records. They are  
12 prepared in anticipation of litigation. The hearsay issue --  
13 this is not the right witness, the Court is correct. What  
14 Mr. Brodsky's beliefs and ideas and insinuations based on the  
15 fact that he was involved in the arrest. Special Agent  
16 Delzotto was not there for the interview, he was not there for  
17 the defendant's arrest. He is not the appropriate witness to  
18 talk about those issues should they be appropriate, which we  
19 strongly believe they are not.

20 *Biaggi* does not apply here. That was a fact of an  
21 offer of immunity based on knowledge. The Miranda -- the fact  
22 that a defendant waived Miranda and speaks, regardless of  
23 whether or not they're a lawyer, would be literally applicable  
24 to every criminal case in which somebody made a statement, and  
25 the government chose not to introduce it.

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1 THE COURT: You would think that if that were the  
2 case, and I'm not doubting that defendants often waive Miranda  
3 warnings and speak to agents after they are arrested, we have  
4 not found a case squarely on point with this particular  
5 situation, despite its common occurrence where the government  
6 has objected to the admission of a Miranda waiver and a  
7 statement, a post-arrest statement to law enforcement --

8 MR. PITLUCK: Neither have we, Judge.

9 THE COURT: -- in support of this consciousness of  
10 innocence.

11 I'm not firmly convinced that it cannot be admitted.  
12 There's no case that we've found, we've looked, that would  
13 forbid the defense from presenting the evidence. I'm just  
14 trying to make a point that this particular agent may not be  
15 the correct person to do it.

16 MR. PITLUCK: Judge, I think there is a reason why  
17 *Biaggi* has not been extended. We Shepardized *Biaggi*, if you  
18 look down it is all declined to follow even in instances where  
19 the defendant's have rejected pleas. We think there's no case  
20 because it is self-evident that just because you refuse to  
21 speak to -- there is a lot of hearsay and relevance issues.  
22 There's tons of cases about defendants introducing the content  
23 of their own statement.

24 If you read Demosthene it says the mere fact that a  
25 statement is made it must be relevant to the issue. So I

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1 disagree with Mr. Brodsky's reading. *Marin* and *Demosthene*  
2 differentiate between affirmatively admitting statements and  
3 admitting a fact that a statement was made. And those cases  
4 say it has to be relevant to something about the making of the  
5 statement. And the example that I gave was the one from  
6 *Demosthene* not simply that it is consciousness of something.

7 It cannot be the case that the consciousness of  
8 innocence that is cited 28 years ago in *Biaggi* not extended  
9 since then applies to anybody who agrees to speak to law  
10 enforcement after waiving Miranda. People do that all the  
11 time.

12 MR. BRODSKY: Your Honor, I do note in the  
13 *Demosthene* case that the government cited, I point Your Honor  
14 to a particular portion of it, we believe it supports us.  
15 It's on 334 F. Supp. 2d 10 point site of 381. Quote, however,  
16 to the extent -- he first tried to evict the post-arrest  
17 statements, and these were actual statements for the truth and  
18 for other arguments. And the Court then said, quote, however,  
19 to the extent that *Demosthene* seeks to use his post-arrest  
20 statements for any purpose other than the truth of the matter  
21 asserted, for example, under Federal Rule 613(b) to impeach a  
22 government witness who has personal knowledge of the  
23 statements may be admissible solely for this limited purpose.

24 Now he was trying to admit the actual statements,  
25 we're not. And so the difference here is what the Court there



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1 was saying was if you are trying to get it for the truth of  
2 the matter asserted, the actual statements, well that's not  
3 coming in, but if there is some other proper purpose, then  
4 they would be admissible.

5 Here we're just asking for not the content for the  
6 waiver, the act of the waiver and the act of speaking and  
7 answering questions and saying I'll speak as long as you want  
8 and answer your questions, is probative, strong probative  
9 evidence for a lawyer of innocence.

10 MR. PITLUCK: Judge, the difference is -- and  
11 *Demosthene* that says nothing about this situation here.

12 What *Biaggi* said is that there is no other inference  
13 that can be drawn from somebody who refused a request for  
14 immunity for not being prosecuted other than a lack of  
15 knowledge. You cannot draw the same inference from somebody  
16 who waived Miranda and speaks to law enforcement. That's the  
17 reason why the courts have refused to extend it to guilty  
18 pleas, there would be a number of other reasons why people --

19 THE COURT: Did you find a case where the Court  
20 specifically addressed whether or not a defendant could argue  
21 consciousness of innocence based on the fact that he had or  
22 she had waived Miranda rights including the Fifth Amendment  
23 right and made a post-arrest statement? There is no case --

24 MR. PITLUCK: No.

25 THE COURT: -- that says you can't do that or that

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1 you can do it. I think that it is -- you know, this is part  
2 of the defense's theory that Mr. Greebel's innocence is  
3 supplanted by the fact that he agreed to waive his Miranda  
4 rights and speak to the FBI. They want to make that argument.  
5 All they want in evidence at this point is the fact that he  
6 waived and he spoke.

7 MR. KESSLER: Your Honor, but the difference is it's  
8 sort of a like the acquittal point, the people waived their  
9 Miranda and tell false statements to law enforcement all the  
10 time. Special Agent Delzotto, you know, certainly has  
11 personal knowledge of that fact. That's why there aren't  
12 cases where there are inferences drawn. The point of *Biaggi*,  
13 the reason it is so rare, it's never been extended is the idea  
14 that someone would turn down an immunity offer by saying I  
15 don't know a fact. No one would do that unless they knew the  
16 fact. But people waive their Miranda rights and say false  
17 statements all the time. That's why these inferences don't  
18 come in.

19 We have courier case after courier case where nobody  
20 is allowed to put the fact in that the courier was interviewed  
21 and waived their Miranda rights and agreed to talk. So that's  
22 the difference. That's why there aren't these cases.  
23 Obviously this is an argument we can have with a different  
24 witness, but that's why this isn't allowed. Because the only  
25 inference the defense is trying to draw from the fact that

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1 someone waived a Miranda right is he must have been telling  
2 the truth. He must have wanted to say the truth, he must be  
3 innocent, but that happens all the time with people who are  
4 not innocent.

5 THE COURT: But in those cases the government will  
6 usually be able to admit, as you can here, the defendant's  
7 statements as admissions and you can show, if you believe it  
8 to be the case, that the statements are false.

9 MR. KESSLER: Right, but the converse they're trying  
10 to put in what they believe is their version of the  
11 statements, which is he must have been innocent and he must  
12 have been saying things that show he's innocent, but they  
13 can't.

14 THE COURT: We spent a lot of time reviewing those  
15 statements --

16 MR. KESSLER: Exactly.

17 THE COURT: -- because both sides wanted to proffer.  
18 We also spent time discussing the videotapes --

19 MR. KESSLER: Exactly.

20 THE COURT: -- and what was going to be an  
21 appropriate video to show the jury and the government had the  
22 ability to put in any statements that the defendant made  
23 post-arrest and/or prove that those statements were false,  
24 which is what I thought you were going to do. So in those  
25 cases I think there is some distinction because the government

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1 did, in fact, use those post-arrest statements.

2 MR. KESSLER: Sometimes the government does,  
3 sometimes the government doesn't. Sometimes the post-arrest  
4 statement is neither here nor there. You don't get to argue  
5 because a statement is made. The only -- let's put it this  
6 way, the inference is that the only person who would waive his  
7 Miranda rights is innocent. That's the inference.

8 THE COURT: All right. I think the best way forward  
9 is this: The defense will not be making arguments until  
10 summation, right? Right now we have a witness who is not the  
11 appropriate witness through whom to admit evidence that  
12 Mr. Greebel did receive written and oral Miranda warnings and  
13 waived both, and that Mr. Greebel thereafter made statements.  
14 That's for another witness who has knowledge of the  
15 circumstances of the statements and the waivers.

16 But I will look into the views, the conflicting  
17 views before summations as to whether or not the defendant may  
18 then argue, based on the Miranda waiver and the making of  
19 statements, that is evidence of innocence.

20 It seems to me that given the quotation of *Wigmore*  
21 and *Biaggi* that they are interpreting fairly broadly a  
22 defendant's right to submit or to argue that certain evidence  
23 is evidence of innocence. But if you are continuing to object  
24 to that argument on behalf of the defendant, then I'll look at  
25 it before the time comes for summation.

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1           And I think that at this point this statement is not  
2 properly admissible through this agent, so in any event I  
3 think we can move forward.

4           MR. KESSLER: We can strike the question, we can  
5 think about whether to provide the Court with additional  
6 material about this question.

7           THE COURT: Right. I don't think it's appropriate  
8 to allow -- despite the fact he's a case agent he does not  
9 have the ability to personally testify about the Miranda  
10 warnings, how they were administered and whether Mr. Greebel  
11 actually waived.

12          MR. BRODSKY: Your Honor --

13          THE COURT: Yes, there might be a document that he  
14 signed waiving it in terms of the oral warnings and whether he  
15 made statements, this agent was not there.

16          MR. BRODSKY: Your Honor, we should be permitted to  
17 try to lay a foundation before this witness. It is perfectly  
18 permissible for us to cross examine a witness and try to lay a  
19 foundation. We believe he has personal knowledge and we'll be  
20 able to lay a foundation.

21          THE COURT: Well, he wasn't there and as you  
22 question this agent about whether he was there when emails  
23 were sent or whether he was there when statements were made,  
24 when some of the individuals whose names have been mentioned  
25 during this trial, the point is that this agent does not have

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1 personal knowledge, i.e. he did not observe, hear, or  
2 administer the warnings or obtain the waivers.

3 MR. BRODSKY: Your Honor, there was a videotape  
4 taken of Mr. Greebel's statements and his waiver. I don't  
5 know whether or not Mr. Delzotto was present when that  
6 videotape statement was being given. I don't know whether or  
7 not Mr. Delzotto had personal knowledge.

8 THE COURT: You just want to ask him preliminarily  
9 whether he was present in the room with Mr. Greebel when  
10 Miranda warnings -- whether he observed Miranda warnings being  
11 given orally or in writing? If he says yes, we don't have an  
12 issue, if he says no --

13 MR. BRODSKY: I want to ask him if he has personal  
14 knowledge about it. And, Your Honor, I would characterize our  
15 view of *U.S. v. Biaggi* is not a broad view of consciousness of  
16 innocence.

17 This is a unique case where state of mind is  
18 squarely at issue. Where we have somebody who waived rights,  
19 gave statements and the government's not offering any  
20 statements. The government can't even cite a case and we  
21 didn't find any, and Your Honor hasn't found any, as I  
22 understand it, where the government -- where this was argued  
23 where somebody tried to admit, tried to get into evidence the  
24 fact that they waived their rights and made statements. So I  
25 don't think we're asking for a broad reading or a reading that

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1 will apply to many cases.

2 I feel like this is a very unique situation. Same  
3 with *Rengan Rajaratnam*. There is no case that could be cited  
4 by Judge Buchwald with respect to the fact of *Rengan*  
5 *Rajaratnam*. In *Biaggi*, it was hard for *Biaggi* to cite case  
6 with a similar set of facts. These are very unique  
7 circumstances where state of mind is at issue, and so,  
8 respectfully, I think we have -- we are not applying the broad  
9 reading of *Biaggi*, but squarely on all fours of *Biaggi*.

10 MR. KESSLER: Your Honor, in 28 years no case has  
11 ever approved of this that the defense has. But hearsay  
12 exception is not a personal knowledge exception, it is a  
13 hearsay exception.

14 Special Agent Delzotto was not in the room. We have  
15 a video, we know he wasn't. Anything he knows will have come  
16 from some other source, so it will be an out of court  
17 statement offered to prove the matter asserted. That's the  
18 end of it. He wasn't there, we know he wasn't there.  
19 Mr. Brodsky knows he wasn't there.

20 THE COURT: I don't know that.

21 MR. KESSLER: He's not in the video, he's not there.

22 MR. BRODSKY: He may have seen the video while it  
23 was being played, he may have seen the video while it was  
24 being recorded.

25 MR. KESSLER: The point is to ask him in front of

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1 the jury is just to get the information in, that's what they  
2 want to do. He doesn't have the knowledge. He wasn't there.

3 THE COURT: Well, as an Officer of the Court, can  
4 you represent to me that he was not in the room or within  
5 earshot or was not able to visualize or observe the  
6 administration of Miranda warnings both orally and in writing  
7 and that he wasn't able to observe and did not observe, hear  
8 or see or be within earshot of any statements that Mr. Greebel  
9 made?

10 MR. PITLUCK: Your Honor, I can certainly make that  
11 representation in regard to the interview -- sorry, the  
12 Miranda warnings, the administration of the Miranda warnings,  
13 the whole period of arrest and the waiver of Miranda warnings,  
14 he was not present for any of that. There were two arrests  
15 going on, he was on the other arrest. I can say that, Judge,  
16 he does not have personal knowledge of this.

17 And to put the issue in front of the jury that's all  
18 they want to do is ask the question. That's why we objected  
19 to the question as soon as it came out. He was not there. I  
20 haven't said this through the whole trial, as an Officer the  
21 Court I can tell you he was not present for the waiver of the  
22 Miranda warning, the arrest of the defendant, or the beginning  
23 of the interview. I don't know if he, at any point, walked by  
24 the room while the interview was going on, but I don't believe  
25 that's the case. And I don't think that's relevant because he



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1 wasn't there for the key issue which is the waiver of Miranda.

2 MR. BRODSKY: Your Honor, in other cases what courts  
3 have done is put the witness on the stand outside the presence  
4 of the jury so questions can be asked to see if we can lay the  
5 proper foundation. I accept Mr. Pitluck's representation, but  
6 the reality is we don't know because he's not on the witness  
7 stand, whether or not he observed the recording being made,  
8 whether --

9 THE COURT: Well, all right. Why don't we have him  
10 come in and ask him those questions, all right. I think  
11 that's appropriate.

12 I'm not saying I disbelieve you, Mr. Pitluck, I take  
13 your word as an officer of the Court, but since Mr. Brodsky  
14 wants to just make preliminary inquiry outside the presence of  
15 the jury, I think we can allow these short questions to be  
16 asked and then we'll move forward. If he doesn't have  
17 knowledge, didn't observe it, didn't hear it, didn't see it,  
18 then my ruling that I have made preliminarily based on your  
19 representation is going to be enforced.

20 MR. PITLUCK: That's fine, Judge.

21 THE COURT: Please bring him in and we will get him  
22 in here and, Mr. Brodsky, I trust this is not going to take  
23 more than five minutes.

24 MR. BRODSKY: That's what I expect, Your Honor.

25 THE COURT: It should be like four questions.

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1 MR. BRODSKY: I haven't thought of them, but I'm  
2 going to do that right now.

3 THE COURT: Well --

4 MR. PITLUCK: I'm happy to do it, Judge.

5 MS. SMITH: Yes.

6 THE COURT: You want the government to do it for  
7 you?

8 MR. BRODSKY: I think we'll --

9 THE COURT: You've got him on cross that's why I  
10 preferred to defer to Mr. Brodsky. The government should get  
11 this done in three minutes, you shouldn't have to take five,  
12 I'll give you five.

13 MR. BRODSKY: I think the government has an interest  
14 of not having him testify with personal knowledge.

15 THE COURT: You can phrase the question as you want.

16 Hello, Agent, sorry to keep you waiting. Come on up  
17 here, please. We have some questions to ask you. Mr. Brodsky  
18 would like to ask you some questions.

19 You're still under oath.

20 THE WITNESS: Sure.

21 (The following took place outside the presence of  
22 the jury.)

23 BY MR. BRODSKY::

24 Q Special Agent Delzotto, on the day of Mr. Greebel's  
25 arrest and Mr. Shkreli's arrest you were assigned to the team

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1 for Mr. Shkreli's arrest, correct?

2 A Correct.

3 Q And there came a time when Mr. Greebel waived his rights,  
4 correct?

5 A Yes. He waived his rights, which is not unusual.

6 Q And you understand that he waived his rights because --  
7 and I would ask you to look towards me not the prosecutors,  
8 but you understand that when he waived his right -- you  
9 understand he waived his rights. Were you in -- you were in  
10 the same building when Mr. Greebel was waiving his rights?

11 A I was a couple of rooms down.

12 Q And you learned very, very quickly that Mr. Greebel had  
13 waived his rights that day?

14 MR. KESSLER: Objection, Your Honor.

15 THE COURT: How did you learn that Mr. Greebel  
16 waived his rights.

17 THE WITNESS: How did I learn? I had a co-case  
18 agent, you know, had told me at some point.

19 THE COURT: Did you observe Mr. Greebel being  
20 administered any Miranda warnings, either orally or in  
21 writing?

22 THE WITNESS: Did I observe it, like, live as it was  
23 happening, no?

24 THE COURT: Did you witness Mr. Greebel waiving any  
25 Miranda rights that he was advised of?

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1 THE WITNESS: In person, no.

2 THE COURT: Were you present for any part of his  
3 interview?

4 THE WITNESS: On the day of Mr. Greebel's arrest I  
5 recall the door might have been open to the room that he was  
6 in, I might have walked past him, maybe ducked in, but I  
7 didn't -- I don't recall speaking to him or anybody in the  
8 room. It was just as we were putting him in the room and my  
9 co-case agent was about to speak to him and then I left  
10 quickly so I didn't say anything to him. I didn't interview  
11 him, I didn't do anything. I went down to the room where  
12 Mr. Shkreli was and I began speaking with him.

13 BY MR. BRODSKY::

14 Q And you observed Special Agent Delzotto, was what you  
15 observed with respect to the door open and Mr. Braconi sitting  
16 in with him you -- Special Agent Braconi you understood he was  
17 going to begin a period of questions for Mr. Greebel, correct?

18 A All I know is he was sitting in the room. I didn't even  
19 know when he was going to do the questioning. Obviously he's  
20 in the room so we could speak to him.

21 Q You understood that was the purpose of putting him in the  
22 room to speak to him?

23 A That was my understanding, yeah.

24 THE COURT: Did you know when you observed him  
25 whether or not he had been given Miranda warnings and waived

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1 them?

2 THE WITNESS: At that time, no, I didn't know.

3 BY MR. BRODSKY::

4 Q And during that day when Mr. Greebel was making  
5 statements, did you observe at any point the statements he was  
6 being made -- from the outside, from the recording?

7 A No.

8 Q At any point?

9 A Not at that time, no.

10 Q And the first time -- you do learn about the videotape  
11 and watched the videotape, correct?

12 A Not that day, no.

13 Q A subsequent day?

14 A A subsequent day, yes.

15 Q And you go down to court where Mr. Greebel is arraigned?

16 MR. PITLUCK: Your Honor, what more do we need?

17 THE COURT: All right.

18 MR. BRODSKY: I'd like a little latitude to lay the  
19 foundation. I think I can lay some foundation. I know that  
20 Mr. Pitluck disagrees -- well, if you ask three more  
21 questions, Your Honor, if I may.

22 MR. PITLUCK: Your Honor, he just testified he  
23 wasn't present for any of this.

24 MR. BRODSKY: I should be allowed three more  
25 questions.

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1 THE COURT: Well, I don't think that answer is going  
2 to change if you start getting into what went on at the  
3 arraignment, right?

4 MR. BRODSKY: Unless he has personal knowledge at  
5 the arraignment post-arrest statements were made.

6 MR. PITLUCK: That doesn't change anything, Judge,  
7 he was told of it after it happened.

8 MR. BRODSKY: And if he watched the videotape  
9 afterwards I do think that's personal knowledge from watching  
10 the videotape.

11 THE COURT: Well, I think that the agent's testimony  
12 establishes that he was not in the room and did not observe  
13 Miranda warnings being given, did not observe Mr. Greebel --

14 MR. DUBIN: Your Honor, can we go sidebar?

15 THE COURT: I'm just trying to recap what he said.  
16 We've done enough of the inquiry.

17 MR. DUBIN: I don't want to disagree in front of the  
18 witness.

19 THE COURT: All right.  
20 He's going to step out.

21 (Witness excused.)

22 MR. DUBIN: I think the reason why I don't want to  
23 do it in front of Mr. Delzotto is that his personal knowledge  
24 doesn't only have to come from him actually observing  
25 something happen. He's the co-case agent. If his fellow case

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1 agent informs him of it or he watches the video, whether it's  
2 that day or a week later and that's how he gains the personal  
3 knowledge, he doesn't have any less personal knowledge than if  
4 he sat there and watched it live. So the fact that he has the  
5 personal knowledge doesn't have to come contemporaneous to  
6 when it's happening or else people -- that's the problem.

7 MR. KESSLER: There is no personal knowledge in a  
8 hearsay context the question --

9 MR. DUBIN: It's in the hearsay context.

10 MR. KESSLER: He's going to testify -- if he  
11 testifies Mr. Greebel waived his Miranda rights during the  
12 interview, it will be based on information that he didn't  
13 observe firsthand. He will be offering some out of court fact  
14 statement he received from the video, from Agent Braconi, from  
15 someone else that that happened and he will be offering it for  
16 the truth. That's the end of the story.

17 MR. DUBIN: I disagree.

18 MR. KESSLER: He was not there. The Miranda waiver  
19 is even more hearsay.

20 MR. DUBIN: If he watched the video and he got  
21 knowledge that way, he clearly has the knowledge that he  
22 waived his rights.

23 MR. KESSLER: You can't call someone who watched a  
24 video to say what happened. You know, there's a robbery, you  
25 put in the -- there's a security video. You don't call

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1 someone say I watched a video and therefore I know what  
2 happened or this happened.

3 MR. DUBIN: Your Honor, that's simply not the case.  
4 That would mean that any police officer, any law enforcement  
5 officer that ever testifies in court has to observe everything  
6 firsthand or else they can't testify to it.

7 THE COURT: Well, typically when there is a  
8 suppression hearing and there is an issue about the Miranda  
9 warnings the agent who administered the Miranda warnings is  
10 the one who comes in to testify that they were given. I don't  
11 think I've ever had a situation where an agent has relied on  
12 hearsay to establish that the Miranda warnings were given.

13 MR. DUBIN: Well one of the things I was hoping we  
14 could to do and what Mr. Brodsky intended to do when he wanted  
15 to ask a few more questions is, let's just find out, he's here  
16 now let's find out how he got the knowledge. If it was  
17 because his co-lead agent told him or it's because something  
18 that he heard that would be different. What we didn't get he  
19 said he watched the video at some point, can we find out when?  
20 He has knowledge of it, he said that. Can we find out the  
21 basis of his knowledge and then if Your Honor isn't satisfied,  
22 I assume we're going to have to call the agent that  
23 administered the rights it seems like.

24 THE COURT: It's a relatively simple thing just call  
25 the agent who was there. What is the big problem with having



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1 the agent come in and testify that I gave him the warnings  
2 orally, he waived, I gave him the warnings in writing, he  
3 waived, he spoke to us. I don't understand.

4 MR. DUBIN: Well, because we're being mindful of the  
5 schedule and how long the trial has lasted.

6 THE COURT: It's a five minute inquiry.

7 MR. DUBIN: And also -- and also the fact that we do  
8 think that this witness appropriate. We think he has  
9 firsthand knowledge. We don't think that it was garnered from  
10 hearsay, but we can't figure that out unless we're allowed to  
11 ask a few more questions. What's the harm?

12 MS. SMITH: Your Honor, it's already been  
13 established he wasn't there at the time of the waiver, when it  
14 was administered orally or in writing. He wasn't there for  
15 the interview. So to the extent he learned about it  
16 afterwards, I'm not sure if temporally if he learned about it  
17 a day later or 10 days later it doesn't make him anymore of a  
18 witness of the events.

19 Our office has trials all the time, and in front of  
20 Your Honor 11 weeks we had to call six different agents to do  
21 different seizures over all three dates because you personally  
22 have to get the person who was there actually heard from the  
23 defendant what they said. This happens all the time.

24 This idea that someone has their the case agent so  
25 anything that happened in the case that they have personal

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1 knowledge about that they can somehow testify to. It's  
2 completely improper. That's why we have the rules of  
3 evidence.

4 As Your Honor pointed out, Mr. Brodsky made a huge  
5 point of establishing that with respect to certain aspects of  
6 the emails the agent doesn't have personal knowledge so he  
7 can't possibly interpret what was in the emails, yet they want  
8 him to talk about events for which he was not present and  
9 testify to them for the truth of the matter, for what was  
10 said, for what Mr. Greebel did. It is just -- it is  
11 completely improper. And once -- I mean, separate and apart  
12 from the issue of whether or not this is consciousness of  
13 innocence, it is the wrong witness. They have a witness on  
14 their witness list who was present for at least one of the  
15 waivers. So there's nothing to prevent them from calling that  
16 person if Your Honor rules that that's the appropriate -- that  
17 evidence can come in.

18 (Continued on the next page.)  
19  
20  
21  
22  
23  
24  
25

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1 (Open court; no jury present.)

2 MR. DUBIN: The only thing that I will say, and then  
3 I will sit down, it is very different, what he was doing with  
4 regard to personal knowledge when Mr. Brodsky was  
5 cross-examining him, is he was purposely injecting his view  
6 about documents being either connected or disconnected to try  
7 to paint it in the most -- in the least favorable light to  
8 Mr. Greebel. That is what he was doing, as opposed to just  
9 reading in the documents. And he clearly had no personal  
10 knowledge about the documents when he read them in on direct  
11 or on cross.

12 Now, he might have his own personal subjective  
13 belief about what documents mean, and that's what we were  
14 dealing with with that situation. Here, he's getting the  
15 personal knowledge, either by watching the video or learning  
16 it some other way, which we don't know yet because we didn't  
17 finish the examination of him.

18 But, you know, I understand Your Honor's ruling, I  
19 am respectful of it, but I think it is very different than  
20 what he was attempting to do with the documents.

21 THE COURT: If he learns about it because someone  
22 told him so, or he read something, that's hearsay. Right?  
23 And there is an agent available to you to call to establish  
24 everything that you want, who has personal knowledge, and  
25 would be an appropriate witness.

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1 MR. DUBIN: Okay.

2 THE COURT: I mean, that's --

3 MR. DUBIN: All right. I was --

4 THE COURT: That's how it works.

5 MR. DUBIN: Yeah, I understand. The only thing is  
6 we were trying to establish is that the waiver happens when  
7 he's watching the video, and the government's position is  
8 that's hearsay? Where an official recording is created of  
9 Mr. Greebel by his co-case agent, and it is not from him  
10 reading anything and not from the case agent saying anything  
11 to him, it is really their position? I don't know. If that's  
12 their position that when he watches the video, that that was  
13 hearsay?

14 MS. SMITH: You can put anybody on the stand.  
15 Anybody who has ever watched the video could get on the stand  
16 and say that Mr. Greebel waived his rights. I mean, I don't  
17 understand, just because he's the case agent, it doesn't make  
18 it -- defense has argued multiple times about double and  
19 triple hearsay. You literally can't just put anyone on the  
20 stand and say, "I watched that video, and so I know that  
21 Mr. Greebel waived his rights." That's not the way it works.

22 MR. DUBIN: He's not just anybody. He just  
23 testified he was three doors down, and he was walking by and  
24 popped his head in, and he's the guy that was coordinating the  
25 arrest for the FBI. I just don't get it, but I understand

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1 Your Honor's ruling, and we have to be respectful of it, so.

2 THE COURT: Well, look. Let me just say something.

3 I appreciate your respect. I have noticed from time to time

4 that heads on both sides of the table are sometimes wagging or

5 shaking or nodding up and down, smirks are being exchanged.

6 Whispering. I think, you know, you're both visible to the

7 jury, you both need to just -- both sides need to just rein it

8 in --

9 MR. DUBIN: We agree.

10 THE COURT: -- and not engage in any sort of

11 gesturing, expressions. You should just be a mask.

12 MR. DUBIN: We agree.

13 THE COURT: We all have to do that because I think

14 the jury should be focused on the witness and the evidence,

15 and should not be distracted by facial gestures or, you know,

16 chats at counsel table.

17 The agent and other witnesses have been called out I

18 think in front of the jury for looking over at the government

19 table. I am a little concerned about that, because when a

20 witness testifies, as you know, they really are supposed to

21 listen for any objection, right, and simply imputing some

22 ill-motive to a witness looking over toward the counsel table

23 to see whether they're going to object or stand up, and

24 suggesting that somehow there's something improper going on I

25 think is not appropriate. If I thought that was going on, I

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1 would say something --

2 MR. DUBIN: Yes, Your Honor.

3 THE COURT: -- but my sense is that, you know,  
4 sometimes the government has started to get up, and that does  
5 attract attention. I, sometimes, am not going to see that, I  
6 am trying to be aware of it, but to the extent a witness is  
7 looking over at the counsel table to see if there's going to  
8 be an objection or whatever is perfectly okay. I don't think  
9 that one should infer that there's something untoward  
10 happening.

11 MR. DUBIN: Okay. Thank you, Your Honor.

12 THE COURT: Okay. So can we just get the jury back  
13 in? I know we have to adjourn in 40 minutes, but let's just  
14 try to salvage what's left of the day.

15 I just want to talk, also, what do we do about what  
16 happened before the break? I am --

17 MR. BRODSKY: I'm happy to withdraw the question and  
18 move on.

19 THE COURT: I am thinking that might be the best  
20 way.

21 MR. BRODSKY: In light of Your Honor's ruling.

22 THE COURT: Okay. And I am sure the government will  
23 help you obtain witnesses' presence, if you choose to do that.

24 MR. BRODSKY: Yes, Your Honor.

25 MR. PITLUCK: Your Honor, I think we would like to

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1 submit something, if -- and Your Honor said the Court was  
2 going to look at the law related to that issue, since I do  
3 think that there's something to be done there.

4 THE COURT: All right.

5 (Short pause.)

6 THE COURT: Juror number 12 would like to be  
7 dismissed by -- I believe it was by 2:00 on Friday to attend  
8 the wake.

9 MS. SMITH: Yes, Your Honor. We would suggest,  
10 depending on whether, obviously, the defense decides to put on  
11 a case, but if they decide not to, that perhaps that would be  
12 a time to do the charge conference. Even if the defense's  
13 case isn't complete, I think we can get through most -- to the  
14 extent that there are a couple of things that need to be  
15 outstanding until the entire case is closed, but that was our  
16 suggestion so that we can kind of utilize the rest of the day.

17 THE COURT: Sure. The only time constraint, we  
18 would have to adjourn at 4:45.

19 MS. SMITH: Right. I understand for the Friday.  
20 But at least we can -- that was just a suggestion. Obviously,  
21 whatever the Court wants to.

22 THE COURT: No, I would like to get it done. I  
23 don't want big gaps in the trial.

24 MS. SMITH: To at least get started.

25 THE COURT: Okay.

DELZOTTO - CROSS - MR. BRODSKY

1 (WHEREUPON, at 4:55 p.m., the jury re-entered the  
2 courtroom.)

3 THE COURT: All jurors are present.

4 Members of the jury, I'd like to thank you again for  
5 your patience and understanding. We do from time to time have  
6 issues we need to resolve.

7 Mr. Brodsky, you may continue your cross.

8 MR. BRODSKY: Yes, Your Honor. Thank you.

9 CROSS-EXAMINATION (Resumed)

10 BY MR. BRODSKY:

11 Q Let me switch to a different question for you, Special  
12 Agent Delzotto. And I will come back to this issue, but I did  
13 want to ask you briefly about the following. And let me turn  
14 to it. So you were -- and then I will come back to it very  
15 briefly, where we left off, Special Agent.

16 But you were shown Government Exhibit 589 in  
17 evidence, which is -- do you need a physical copy, Special  
18 Agent Delzotto, or could you --

19 A If you don't mind, I like a physical copy for everything.

20 Q Okay. While we're getting you a physical copy of 589 in  
21 evidence, do you -- we are going to pull it out from our  
22 collection.

23 THE COURT: I have it here. May I share my copy  
24 with him, Mr. Brodsky?

25 MR. BRODSKY: Yes, Your Honor, please. Thank you.



DELZOTTO - CROSS - MR. BRODSKY

1 BY MR. BRODSKY:

2 Q And, Special Agent Delzotto, you were asked some  
3 questions about this document, correct, which related to  
4 Mr. Lavelle's settlement agreement, correct?

5 A Yes, I believe so.

6 Q And the last e-mail in that chain, you can go to it, from  
7 Mr. Greebel, May 3, 2013, to Michael Lavelle, right?

8 A And copying Martin Shkreli, yes.

9 Q Subject, draft settlement agreement, correct?

10 A Correct.

11 Q Hi, Michael. As discussed, attached is a draft of the  
12 settlement agreement.

13 That's what it says, correct?

14 A It says that, yes.

15 Q And then in response, Mr. Lavelle says, on May 9, six  
16 days later, in the second line, quote, the amounts, however,  
17 are not what I expected, end quote. Do you see that?

18 A I see that statement, yes.

19 Q And then above that Mr. Shkreli says in part, May 22,  
20 2013, well -- do you see Mr. Greebel forwards that to  
21 Mr. Shkreli, and says: Please see below, from Lavelle, May 9,  
22 2013?

23 A I do see that, yes.

24 Q And then Mr. Shkreli says in response to Mr. Greebel,  
25 copying Mr. Lavelle -- that's what he does, right, he copies

DELZOTTO - CROSS - MR. BRODSKY

1 Mr. Lavelle?

2 A Yes.

3 Q I didn't hear you. Sorry.

4 A I said yes.

5 Q And it says: I agree. It should be a total of two times  
6 your initial investment. Please fix. Evan. I was very, very  
7 clear on the call with Lavelle. I am therefore disappointed  
8 that you sent him an underwhelming nonagreed upon deal. The  
9 300K savings doesn't help me, and only frustrates a key  
10 partner of ours and myself. Embodify the deal we agreed upon,  
11 please, end quote.

12 Do you see that stated there?

13 A I see it stated there, yes.

14 Q Do you remember, one way or the other, if we can scroll  
15 down to the original e-mail at the bottom, before Mr. Shkreli  
16 sent that, do you remember one way or the other seeing an  
17 e-mail where prior to May 3, 2013 Mr. Greebel sent the draft  
18 settlement agreement containing one million dollars as a  
19 settlement number to Mr. Shkreli?

20 A There's no way I can answer that. There's a lot of  
21 documents. I don't have them in my mind what's in  
22 chronological order before May 22 or after it. I don't know.

23 Q Well, let me show you -- do we have 561 in evidence? Let  
24 me show you very quickly, 561 in evidence, Government Exhibit,  
25 an e-mail from Mr. Greebel to Martin Shkreli, entitled Lavelle

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1 settlement and release agreement. Do you see that?

2 A I see it, yes.

3 Q And you see it is April 10, 2013, right?

4 A I don't know if you are talking about the same settlement  
5 and release agreement, though.

6 Q Understood. But you see it is dated April 10, 2013,  
7 correct?

8 A I see that date on this document, yes.

9 Q And you would agree with me, sir, that April 10, 2013,  
10 comes before, weeks before May 3, 2013, correct?

11 A May 22, right.

12 Q Well --

13 A 2013.

14 Q -- do you see on the bottom of Government Exhibit 589,  
15 the e-mail exchange we were just looking at, the e-mail  
16 Mr. Greebel sends to Mr. Lavelle, copying Mr. Shkreli, draft  
17 settlement agreement, is dated May 3, 2013?

18 A The first e-mail in that chain is dated, correct, May 3,  
19 2013.

20 Q So April 10, 2013, is weeks before the exhibit we're  
21 looking at, from Mr. Greebel to Mr. Shkreli, attaching Lavelle  
22 settlement release agreement, is dated weeks before, correct?

23 A It is dated weeks before, yes.

24 Q And if you turn to the attachment, and you go to the  
25 bottom, and it says, payment terms, you agree it states, the

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1 MSMB entities, or Retrophin, individually or collectively the  
2 payor, agreed to deliver or cause to be delivered to releasor  
3 total amount of one million dollars. And then in  
4 parenthetical, one million dollars, the cash payment, and,  
5 blank, shares of common stock, par value of dollar point 0001,  
6 per share. And it goes on.

7 Do you see that? Did I read that correctly, that  
8 portion?

9 A I see it on here.

10 Q Okay. And you can't point me to an e-mail or a document,  
11 can you, between April 10, 2013 and May 3, 2013, in which  
12 Mr. Shkreli said to Mr. Greebel, in an e-mail, a million  
13 dollars is not what we worked out with Mr. Lavelle, correct?

14 A Can I show you one?

15 Q Yes. Can you point to me one or show me one?

16 A Like I said before, there's a lot of documents. I don't  
17 have them memorized. There could be one there. I don't know  
18 for sure.

19 Q All right. Now, fair to say you did introduce into  
20 evidence some documents where Mr. Shkreli sent something to  
21 Mr. Greebel, and Mr. Greebel asked what is this, asked  
22 questions about it? Do you remember that on your direct  
23 examination?

24 A I do remember some e-mails where he asked questions, yes.

25 Q And, for example, Government Exhibit 506A, in evidence,

DELZOTTO - CROSS - MR. BRODSKY

1 if we put it up on the screen, I think this is a short one --

2 MR. BRODSKY: Can Ms. Rubin approach? And can we  
3 put it on the -- oh, no. We're out of power.

4 MR. CARTER: No, I don't have it.

5 MR. BRODSKY: Oh, you don't have it. Okay. That's  
6 all right.

7 THE COURT: Use the ELMO. The jury needs to see it.  
8 Do you want my copy, Mr. Brodsky? I have an extra copy here.  
9 506, is that the one?

10 MS. RUBIN: 506A.

11 MR. BRODSKY: It is all right.

12 THE COURT: I have it, if you want it. Let's go.  
13 Come on, Mr. Brodsky.

14 MR. BRODSKY: Thank you.

15 THE COURT: Thank you.

16 BY MR. BRODSKY:

17 Q You see where Mr. Greebel is sent by Mr. Shkreli,  
18 December 28, 2012, Retrophin liquidation press release, and  
19 Mr. Greebel responds, question, question, question, question,  
20 did I miss something?

21 A Do I see it? Yes, I see it.

22 Q Okay. And then if we put up Government Exhibit 520 in  
23 evidence, you see where it says, February 19, 2013,  
24 Mr. Greebel saying to Mr. Shkreli, 5:29 p.m., what is this  
25 about?

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1 Do you see that in that e-mail?

2 A Hold on. I see the e-mail.

3 Q Okay. And there were other e-mails, would you agree,  
4 where Mr. Greebel received information from Mr. Shkreli, and  
5 asked, essentially, what is this about?

6 A Are there other e-mails?

7 Q Yes.

8 A I don't know what other e-mails you are referring to.

9 Q In general. As the lead case agent, you know there are  
10 other e-mails which Mr. Shkreli -- Mr. Greebel responded to  
11 Mr. Shkreli, providing information which -- informing him of  
12 something, he responded, what is this about?

13 MR. PITLUCK: Objection to the form, Your Honor.

14 THE COURT: I will allow the question.

15 You can answer it. Are you aware of any other  
16 e-mails?

17 THE WITNESS: Specifically, that I could cite, no,  
18 but if you want to show me one, I will -- I can confirm.

19 BY MR. BRODSKY:

20 Q What about generally? You generally know this from the  
21 documents you reviewed, correct?

22 A Do I generally know that there was questions asked?  
23 Generally there's questions asked in conversations.

24 Q And multiple e-mails, correct, where Mr. Greebel  
25 responded to something Mr. Shkreli sent and said, what is this

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1 about --

2 MR. PITLUCK: Objection. Form.

3 BY MR. BRODSKY:

4 Q -- in sum and substance?

5 THE COURT: I am going to sustain that objection.

6 MR. BRODSKY: All right.

7 BY MR. BRODSKY:

8 Q Let me return back to where we left off, Special Agent  
9 Delzotto.

10 THE COURT: Does he need the exhibits any more?

11 MR. BRODSKY: He doesn't need the exhibit. Thank  
12 you, Your Honor.

13 BY MR. BRODSKY:

14 Q Yes or no, Special Agent Delzotto, you agree that it  
15 would be important before arresting Mr. Greebel in December  
16 2015, to find out what Mr. Greebel's partners at Katten Muchin  
17 working on Retrophin matters knew; correct or incorrect?

18 A Incorrect.

19 Q And you agree that it would be important, for example,  
20 prior to arresting Mr. Greebel, to speak to Michael Rosensaft,  
21 a partner at Katten Muchin, regarding e-mail communications  
22 that were introduced during your direct examination, prior to  
23 arresting Mr. Greebel?

24 A Would I speak to Mr. Rosensaft?

25 Q You would agree it would be important, prior to arresting

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1 Mr. Greebel, to go speak to Mr. Rosensaft, a partner at Katten  
2 Muchin, about the e-mails that you introduced during your  
3 direct examination; yes or no?

4 A I would not have spoken to Mr. Rosensaft during the  
5 investigation.

6 Q And you agree, sir, that it would be important, prior to  
7 arresting Mr. Greebel, to talk to Howard Cotton, a partner who  
8 worked on the litigation relating to Timothy Pierotti, before  
9 arresting Mr. Greebel; yes or no?

10 A I would not have spoken to lawyers at Katten Muchin, no.

11 Q And you suggested in your -- well, withdrawn.

12 Your position, sir, is that you could not speak to  
13 lawyers at Katten Muchin prior to arresting Mr. Greebel?  
14 That's your position, correct?

15 A My position is that it didn't make sense, given that  
16 Mr. Greebel was the main subject of the investigation or one  
17 of the two main subjects to speak to people that he works with  
18 on a daily basis because he could get wind of it, he could  
19 destroy evidence. I mean, there's a litany of things. He  
20 was -- as you know, as a formal -- former prosecutor --

21 MR. PITLUCK: Objection, Your Honor.

22 THE COURT: Excuse me. We'll strike that last  
23 statement by the witness.

24 THE WITNESS: Sorry.

25 THE COURT: Hit the erase button, members of the



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1 jury, please, about Mr. Brodsky.

2 Go ahead.

3 BY MR. BRODSKY:

4 Q Special Agent Delzotto, you knew at the time that  
5 Mr. Greebel was arrested he was no longer working at Katten  
6 Muchin, but at a firm called Kaye Scholer, correct?

7 A Correct.

8 Q And Kaye Scholer is a multi national firm, correct, a  
9 multi-national international firm, correct?

10 A I don't know anything about Kaye Scholer.

11 Q And you knew that e-mails at Katten were at Katten,  
12 correct?

13 A Did I know e-mails --

14 Q Yes.

15 A -- were at Katten?

16 Q Yes.

17 A Yes, I knew e-mails were at Katten.

18 Q And you knew that Mr. Greebel, there was zero risk that  
19 Mr. Greebel would flee, correct?

20 A There was a lot of risk in talking to him. Fleeing, no,  
21 that wasn't necessarily a risk here, but there was other  
22 risks.

23 Q So your position, sir, is that the risk in talking to  
24 somebody, Mr. Greebel, there was a risk to speak to  
25 Mr. Greebel, your view is there was a risk to speak to

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1 Mr. Greebel himself prior to arresting him; that's your view,  
2 correct?

3 A That's my view, yes.

4 Q And there was a risk to speaking to anybody at Katten  
5 prior to arresting him, correct, that's your view?

6 A That was my view, yes.

7 Q And, therefore, your decision, and the reason you think  
8 there was a risk was because you believed -- am I correct, you  
9 believed that there was a possibility that Mr. Greebel  
10 might -- what did you say, destroy evidence, prior to the  
11 arrest?

12 A There's a litany of things. When you're talking about a  
13 main subject -- I wouldn't approach him, one, he was an  
14 attorney, he's well aware of his rights, so the odds of him  
15 speaking to me are nil. Two is he could destroy evidence. If  
16 I spoke to people that he worked with, either former employees  
17 or current employees, however you want to describe, they could  
18 have let him known of the investigation, and he could have  
19 gotten rid of evidence or destroyed evidence. Plus, it's --  
20 in investigations, you do not -- you typically don't approach  
21 the main subject of a case because, you know, he's -- you  
22 approach lower level people to have -- to see if they will  
23 cooperate and give you information on the higher level person.  
24 He was the apex, right, him and the other person involved in  
25 the case.

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1           So who is he going to give me? He's the main  
2 target. So I wouldn't have -- it wouldn't -- didn't make  
3 sense to me, as an investigative step, to go and speak to  
4 Mr. Greebel.

5       Q     You know, sir, that there's practices at the FBI and at  
6 US Attorney's offices throughout this country, you know from  
7 your own personal experience, that if somebody is to be  
8 charged in a nonviolent case, where there's no risk of flight,  
9 the best practice is to actually approach them and speak to  
10 them to get an explanation before you put handcuffs on a  
11 person --

12           MR. PITLUCK: Objection, Your Honor.

13 BY MR. BRODSKY:

14       Q     -- and charge them with a crime? You know that to be the  
15 case, don't you, sir?

16           MR. PITLUCK: Objection, Your Honor.

17           THE COURT: All right. I am going to sustain the  
18 objection.

19 BY MR. BRODSKY:

20       Q     Special Agent Delzotto, you have been part of many cases  
21 in which before arresting somebody for a nonviolent offense  
22 where they are not a risk of flight, you've gone to talk to  
23 them, have you not?

24       A     Most of the cases where I was a lead case agent, I did  
25 not take that approach, no, and that is not --

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1 Q That's not your approach, but you know --

2 A No, that's not the FBI's approach, that's something that  
3 the US Attorney's office in some cases does, but that's not  
4 the FBI's approach.

5 Q So you know there are US Attorney's offices, federal  
6 prosecutors, who prefer, before they arrest somebody for a  
7 nonviolent offense, where there's no risk of the destruction  
8 of evidence, there's no risk that they're a flight risk, that  
9 you go talk to them and ask them some questions, correct?

10 A That's not true.

11 MR. PITLUCK: Objection, Your Honor.

12 THE WITNESS: That's not true.

13 BY MR. BRODSKY:

14 Q Now, Special Agent Delzotto --

15 THE COURT: Overruled.

16 BY MR. BRODSKY:

17 Q -- isn't it a fact that not only -- withdrawn.

18 Isn't it a fact that by not going to talk to people  
19 who worked at Katten with Mr. Greebel on Retrophin matters,  
20 you, when you arrested Mr. Greebel, did not have all relevant  
21 information; yes or no?

22 MR. PITLUCK: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. BRODSKY: Is that a form objection, Your Honor?

25 THE COURT: I think that the objection was based on

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1 what we've talked about in prior rulings and motions, which  
2 were extensive.

3 BY MR. BRODSKY:

4 Q Now, you knew, did you not, that Mr. Greebel was an  
5 attorney, I think you said, especially because he was an  
6 attorney, right? You did not --

7 A Those are your words. I didn't say "especially." Did I  
8 know he is an attorney? Yes. "Especially attorney," I don't  
9 recall saying that.

10 Q Let me see what the transcript says.

11 I think you said that, quote: I won't approach him,  
12 one, he is an attorney, well aware of his rights, so the odds  
13 of speaking to me were nil, end quote.

14 You testified that way, correct?

15 A Which is different than what you just said.

16 Q And you understood that other people at Katten Muchin,  
17 the odds of them speaking to you were very strong, correct?

18 MR. PITLUCK: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. BRODSKY:

21 Q You understood, sir, prior to arresting Mr. Greebel, that  
22 Retrophin had waived its privileges in the areas you were  
23 interested in inquiring about; yes or no?

24 A I don't think I can answer that with yes or no.

25 Q You agree, sir, that, generally, putting ourselves

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1 outside this case, when you investigate a case, a nonviolent  
2 case, it is important for you to obtain as many relevant  
3 documents as possible, correct, prior to charging him?

4 A I would say, generally, that's true, unless -- well, I  
5 would say generally that's true.

6 Q And in order to obtain as many relevant documents as  
7 possible, you have to go to multiple sources, correct?

8 A Yes, that's correct.

9 Q And often for a nonviolent case, you have to speak to a  
10 lot of different people, correct? Yes or no?

11 A Yes, that's true.

12 Q And it is fair to say, again, taking ourselves out of  
13 this case, that to get it right, before you arrest somebody,  
14 to get it right, it is important to talk to the people who  
15 worked on the very specific documents or the very specific  
16 transactions you're investigating before you arrest someone?

17 MR. PITLUCK: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. BRODSKY:

20 Q Isn't it true, Special Agent Delzotto, that you rushed  
21 your investigation and arrested Mr. Greebel prematurely?

22 A That's ridiculous.

23 (Continued on the next page.)  
24  
25

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1 Q And isn't it true, sir, that following the arrest of  
2 Mr. Greebel you've seen new documents that you never saw  
3 before, yes or no?

4 A After his arrest?

5 Q Yes or no, sir. That's a yes or no question. Have you  
6 seen new documents following his arrest that you never saw  
7 before?

8 A I did see new documents, yes.

9 Q And isn't it the case that I showed you on  
10 cross-examination a few documents that you had never seen  
11 before prior to arresting Mr. Greebel?

12 A Did I see new documents? Yes, I saw new documents.

13 Q Wouldn't it have been important for you to find out what  
14 people at Katten Muchin had to say about Mr. Greebel and his  
15 work before you arrested him, yes or no?

16 MR. PITLUCK: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Special Agent Delzotto, although you didn't have to do,  
19 you didn't have to go to Mr. Greebel and talk to him before  
20 you arrested him, you knew that was an option you had, yes or  
21 no?

22 A It was not an option, no.

23 Q You knew it was an option that you had, to talk to other  
24 people who work at Katten Muchin, yes or no, before you  
25 arrested Mr. Greebel?

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1 A No, for the reasons I gave you before.

2 MR. BRODSKY: Your Honor, I see the hour is near and  
3 what I would ask your Honor to do is allow me to just see  
4 whether I can narrow whatever else I have to less than 30  
5 minutes, which I'm committing to in front of the jury to do.  
6 And I did honor my commitment last time with less than 30  
7 minutes on cross-examination.

8 THE COURT: That's for tomorrow.

9 MR. BRODSKY: For tomorrow.

10 THE COURT: He's not asking you to stay.

11 MR. BRODSKY: For tomorrow. I committed last time  
12 when we were about this point to 30 minutes the next morning.  
13 I'm committing in front of the jury to less than 30 minutes  
14 tomorrow morning.

15 THE COURT: All right. At this time then we will  
16 excuse the jurors.

17 I thank you again for your service. And for your  
18 indulgence and attention. Please don't talk about the case.  
19 Please avoid all media coverage of anything touching on,  
20 anything relating to any names you may have heard in this  
21 trial. And have a safe trip home. I'll see you tomorrow  
22 morning at 9:00. Thank you.

23 (Jury exits the courtroom. Time 5:27 p.m.)

24 THE COURT: Sir, you may step down.

25 (Whereupon, the witness steps down.)



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1 THE COURT: The agent has asked whether he could  
2 speak to the prosecutors about his hotel arrangements.

3 MR. PITLUCK: I was just going to make that request,  
4 purely logistical. We weren't anticipating this, I need to  
5 talk to him about this.

6 THE COURT: I think that's fine.

7 MR. BRODSKY: Our apologies that he has to spend  
8 another night in New York again.

9 THE COURT: He's been here a while.

10 Thank you.

11 MR. PITLUCK: I'm going to step out.

12 THE COURT: Yes, of course.

13 Is there anything I should address at this time?

14 MR. DUBIN: Yes, your Honor, just briefly.

15 Your Honor, Special Agent Delzotto has now kicked  
16 the door wide open on the issue that we were dealing with  
17 earlier. He said in his testimony that the reason that he  
18 didn't, one of the of the reasons, that he didn't approach and  
19 speak to Mr. Greebel is because the chances of him speaking to  
20 him were nil. Now, the jury is left with the impression that  
21 that is in fact the case, when it is not the case.

22 We should be permitted tomorrow to cross-examine him  
23 and to ask him, sir, that's not the case, while you thought  
24 the chances were nil, in fact what happened was he waived his  
25 rights and he spoke to your colleague. He set it up. The

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1 question didn't ask for it. He blurted it out and he  
2 reaffirmed it twice. There can be no better evidence of  
3 consciousness of innocence. And if we don't get to address it  
4 and get deprived of it, we should be able to come back that he  
5 told the jury that 'the chances of him talking to me were nil'  
6 he was talking about in a pre-arrest scenario.

7 Now he has been arrested, pulled out of his house at  
8 5:30 in the morning, dragged downtown here, and he not only  
9 speaks to them, but waives his rights. We should be  
10 permitted, your Honor, most respectfully, to now confront him.  
11 Because he's told the jury something that we can impeach him  
12 with. We have something directly on point.

13 Because not only did Mr. Greebel speak to his  
14 colleague, but spoke to him with handcuffs on, we won't bring  
15 that part out. But he offered up the testimony so there  
16 should be nothing that prevents us. We wanted to make sure  
17 that we fronted it with your Honor, because now he has opened  
18 the door to it.

19 THE COURT: The question was framed in terms of  
20 prior to arresting him. That was the antecedent condition  
21 that Mr. Brodsky posed in every single question. Prior to  
22 arresting Mr. Greebel did you do X,Y, and Z. It was a litany  
23 of questions about prior to the arrest.

24 MR. DUBIN: Okay, but the implication --

25 THE COURT: I want to make a clear distinction about

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1 the issue before me at sidebar, which was after his arrest,  
2 and the issue that Mr. Brodsky posed that prompted the agent's  
3 response.

4 MR. DUBIN: I understand, your Honor. But the  
5 implication was clear from Special Agent Delzotto's testimony,  
6 which was that the reason that he wouldn't go speak to someone  
7 that was being investigated is because they wouldn't speak. I  
8 think he said, I think it's in the record we'll check tonight  
9 in the transcript, is because he knows his rights. In fact,  
10 yes, he does know his rights. And prior to arrest, if that  
11 was the reason why he would be reluctant to speak to him  
12 because the chances were, his words not mine, nil, then  
13 post-arrest, certainly the specter is higher. He knows his  
14 rights, certainly would never under those circumstances talk.  
15 We should simply be allowed the latitude to confront him.

16 THE COURT: Just to be clear, Mr. Dubin, I don't  
17 remember whether you were in the room, maybe you were, but I  
18 did not exclude the testimony. I was just making the point  
19 that this is the not the right witness from whom to elicit  
20 that testimony. All right. So I'm not, I haven't precluded  
21 you from inquiry of the appropriate agent about the  
22 administration of Miranda warnings, the waiver by Mr. Greebel,  
23 and the fact that he made statements.

24 MR. DUBIN: Understood, your Honor. We can frame  
25 the question in a way that we don't talk about invoking

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1 rights, not invoking rights. We can just say -- I don't want  
2 to give away the question, I need to formulate it tonight, but  
3 we don't have to talk about it within the context of his  
4 rights being read or waived, but simply that what happened was  
5 after he was arrested he did exactly what you told the jury  
6 yesterday you said there was nil chance he would do. Nothing  
7 could be more relevant to our client's state of mind,  
8 especially given how Special Agent Delzotto was testifying,  
9 than being able to confront him with that.

10 MS. SMITH: Your Honor, I'm not sure why the agent's  
11 subjective understanding of why someone might or might not  
12 talk to them prior to arrest is reflective on the defendant's  
13 state of mind as to what was going on. What the agent said  
14 was, in part, it wasn't the only reason that he didn't  
15 approach the defendant, was because he was a lawyer, and he  
16 didn't expect him to waive his rights, in that context. Not  
17 to mention, as we know in a pre-arrest context, if you do  
18 approach and they are not under arrest, there is a different  
19 dynamics. Not to mention, we could get into this down this  
20 road, they cannot approach a lawyer even with the waiver.  
21 There is a whole process. There are multiple other reasons in  
22 addition to the fact that he said the chances of him talking  
23 to him were nil, that he would have that subjective belief  
24 before arrest. Including the fact that he works at the law  
25 firm. He might lawyer up immediately. All sorts of other

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1 issues.

2 This is where the 403 issue comes in. We're going  
3 to have a mini trial about how often people waive their  
4 rights, I think, if we go down this road. We can include this  
5 in our briefing. Plenty of people waive their rights and lie.  
6 And plenty of people waive their rights and end up being  
7 convicted. Just because you waived your rights doesn't mean  
8 you're in fact innocent.

9 If the question is what is the inference to be drawn  
10 from somebody deciding to waive their rights, if the defense  
11 is going to try to argue that's evidence of innocence, we  
12 would put in evidence that is not always the case.

13 THE COURT: It's subjective consciousness personal  
14 to the person who decides to waive rights, what he or she  
15 consciously may believe about their criminal exposure. And  
16 it's evidence from which inferences may be drawn, but it's  
17 totally subjective and individual to the defendant under  
18 arrest really.

19 MR. DUBIN: Agreed, your Honor.

20 THE COURT: It's not empirically correlated that  
21 people who waive Miranda warnings and talk to law enforcement  
22 after an arrest have been demonstrated with any statistic  
23 clarity that they are innocent or guilty. I think it's a  
24 consciousness. The conscientiousness goes to the arrestee,  
25 not to anyone else. Right?

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1 MR. DUBIN: Agreed, your Honor. And --

2 THE COURT: So I think it's fine if you are arguing  
3 that Mr. Greebel's consciousness of innocence that he believed  
4 was innocent; and therefore, willing to talk to law  
5 enforcement. I think that that, as I said, I'm inclined to  
6 allow that evidence. The Government has asked me to just put  
7 it on ice for a little bit so you all can give me further  
8 briefing since the only case that anyone seems to come back to  
9 is Biaggi which the Government points out, has not been  
10 followed by any Court since then.

11 MR. DUBIN: Understood, your Honor.

12 THE COURT: I'm done.

13 MR. DUBIN: Are you sure?

14 THE COURT: Yes.

15 MR. DUBIN: That was the case. Prior to  
16 Mr. Delzotto resuming the stand and he testified about his  
17 subjective belief, he said he thought that the chances of  
18 Mr. Greebel speaking were nil. So the fact of the matter is,  
19 all of these arguments that Ms. Smith are making go to weight,  
20 not admissibility. We still can confront something he now  
21 said, something that is clearly impeachable in our view.  
22 Whether or not it's effective impeachment is for the jury to  
23 decide. He said the chances of Mr. Greebel speaking would  
24 have been nil. We can certainly point out, and feel that  
25 respectfully we should be permitted to point out, but what

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1 happened was after he was arrested he did just that, he spoke  
2 right away. And whether or not, we're certainly not  
3 suggesting that there is empirical data that says that because  
4 he spoke, that's consciousness of guilt and that all of those  
5 people or 80 percent of them are acquitted.

6 If the Government believes that, yes, he spoke, then  
7 he lied, it's still their case. They have the right to put in  
8 his post-arrest statements. They can put them in and point  
9 out where they think that he mislead the FBI. And we have our  
10 counter designations and we can do that.

11 This issue was just recreated, I suggest. And it's  
12 not the issue of him sitting there and having personal  
13 knowledge about whether or not he waived his rights in that  
14 instance. But the very knowledge of the fact that Mr. Greebel  
15 did exactly what he is saying there was nil chance could  
16 happen, we certainly should be permitted to point that out.  
17 And then Ms. Smith or Mr. Pitluck on redirect can do whatever,  
18 ask whatever questions he wants. They can argue to the jury  
19 that a lot of people go in and lie and waive their rights and  
20 lie, that's a different issue. That goes again to weight, not  
21 admissibility.

22 We shouldn't be -- I wasn't meaning to suggest  
23 earlier, your Honor, that you had precluded a certain line of  
24 defense questioning. We understand the Court's ruling that  
25 whether or not he's aware that Mr. Greebel sat in the room and

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1 waived his right is for the agent that was sitting in the  
2 room. But now that he's given this testimony we certainly  
3 should be able to just point out the fact that what  
4 Mr. Greebel did, if you want us to leave out the fact that he  
5 said, I waive my rights and I'm going to speak. What he did  
6 was is he sat in the room with him and the agent and he spoke.  
7 He did exactly what you told the jury there was nil chance of.  
8 We can point out to the jury, and certainly the Government can  
9 point out to the jury, we were talking about two different  
10 situations and pre-arrest versus post-arrest, they can point  
11 that out and make the argument.

12 MS. SMITH: That was the point I was going to make.  
13 There is a difference between an individual who is approached  
14 cold prior to arrest and the circumstances after arrest. So  
15 this idea that impeachment, the agent is testifying honestly.  
16 Among other reasons, he thought that there was a nil chance  
17 that he would talk to him. Set aside all the other reasons  
18 why he wouldn't necessarily want to approach Mr. Greebel prior  
19 to arrest. But I do think that's a completely different set  
20 of circumstances than after arrest. It's not impeachment. It  
21 is in fact what he thought at the time.

22 MR. DUBIN: We think it is impeachment. I  
23 understand Ms. Smith's arguments, those are certainly  
24 arguments that they can make. And we should be entitled to  
25 confront the witness with this.



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1           We didn't elicit it. We went back and checked the  
2 transcript a few times to make sure that it was something that  
3 he was responding to why he didn't go speak to anyone at  
4 Katten Muchin. Why he didn't speak to Mr. Greebel. We  
5 frankly vehemently disagree with those reasons, because it  
6 happens all the time in white collar cases. They get a target  
7 letter. They get an attorney. And before they go testify in  
8 the Grand Jury, decide whether they're going to testify in the  
9 Grand Jury.

10           That wasn't this case. He stated his reasons why.  
11 If I'm a betting man, a safe bet is we'll go into a little  
12 more on redirect. The fact of the matter is, is that they  
13 didn't. They didn't speak to Mr. Greebel before.

14           THE COURT: He admits he didn't speak to him. He  
15 set forth his reasons why. He, as the case agent, didn't do  
16 it. He also testified that he rarely does it in his cases.  
17 He's on a white collar squad and different agents investigate  
18 cases different ways. I think what he was trying to say is  
19 there no set FBI policy. This is the way he operates. And  
20 he's not in violation of any protocols or AG memos or director  
21 memos. This is what his view was of the landscape based on  
22 his investigation, which I don't know how long he was  
23 investigating this case, but it sounds like it was quite a  
24 while.

25           MR. DUBIN: A lot of documents.

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1 THE COURT: A lot of documents, a lot of witnesses,  
2 and a lot of months went by. His assessment that it would not  
3 fruitful to approach the target, who was a lawyer, in a law  
4 firm, or any of his colleagues where he had been employed for  
5 a number of years, many of whom I'm sure are friends or  
6 friendly colleagues, was a judgment call that this agent made.  
7 And he was asked and articulated reasons why he didn't  
8 approach Mr. Greebel prior to arrest.

9 You can make an argument that after arrest  
10 Mr. Greebel, in fact, did waive Miranda and speak to an agent,  
11 not this agent but another agent, and argue to the jury that  
12 Special Agent Delzotto's hunch that he wouldn't be likely to  
13 talk to him was --

14 MR. DUBIN: I understand, your Honor. Look, I think  
15 we'll be very careful to look at the record tonight, be  
16 mindful of the conversation we had at sidebar of your Honor's  
17 ruling with respect to that issue regarding waiving the rights  
18 and formulate a question. If the Government finds it  
19 objectionable, I'm sure they'll raise an objection.

20 MS. SMITH: We just ask to preview the question,  
21 which is something that we've done in questions when we were  
22 talking about some of issues with the benefit of Retrophin  
23 with Mr. Aselage, we hashed out the question ahead of time. I  
24 have a feeling we're going to object one way or the other, but  
25 we want to hear it in advance.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. DUBIN: I'll try to confer with the Government,  
2 maybe even tonight, so we don't waste time in the morning.

3 MS. SMITH: I was going to raise for scheduling  
4 tomorrow if Mr. Brodsky only has a half hour left, let's  
5 assume the morning. We would, obviously it's hard to do the  
6 Rule 29 motion then potentially start the defense case. We  
7 wanted to make sure that the defense's first two witnesses  
8 were still Howard Jacob then I believe Steven Ferruolo.

9 MR. CHAN: We'll get back to you tonight

10 MS. SMITH: We need to know now.

11 THE COURT: They have to prepare cross. Is there  
12 any reason you can't tell them now?

13 MR. CHAN: We don't know who the first witness will  
14 be, but it will come from the first five. We should be able,  
15 as a team, to collect our thoughts who we are going to call  
16 rather than be put on the spot.

17 MS. SMITH: At the end of every trial day we let the  
18 defense know.

19 MR. CHAN: You told us at night

20 MS. SMITH: We turned around and told. We  
21 understood it was an order, not the first five witness in any  
22 order. We just need to know.

23 MR. CHAN: I understand. We can't answer the  
24 question without knowing who is available.

25 THE COURT: Tell them by 6:30.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. CHAN: That's fine

2 THE COURT: I have a question about Ms. Rubin, her  
3 in camera submission. I'm having trouble understanding some  
4 of the marks and what it is that I'm looking at.

5 MS. RUBIN: I had don't have an independent copy in  
6 front of me.

7 THE COURT: I could pull it up on the docket.

8 MR. KESSLER: That's probably we --

9 THE COURT: We'll do it privately

10 MS. RUBIN: Mr. Chan can speak to those things as  
11 well.

12 THE COURT: All right.

13 MR. CHAN: When Mr. Kessler previewed our  
14 disagreement about the remaining disagreement as to which  
15 portion of the Rosenfeld arbitration award to redact or not  
16 redact. And I think we should discuss it today, it might too  
17 close tomorrow.

18 THE COURT: Who is going to put this in, the  
19 defense?

20 MR. CHAN: Yes, the defense through Mr. Rosenfeld.

21 MR. KESSLER: I don't think any of the witnesses the  
22 defense has in their first five witnesses, certainly not Mr.  
23 Rosenfeld.

24 THE COURT: I'd love it if you can work it out.  
25 Have you made any progress?

DELZOTTO - CROSS - MR. BRODSKY

1 MR. KESSLER: We're down to two things.

2 MR. CHAN: Down to two things we cannot agree.

3 THE COURT: Do you want me to resolve them now or  
4 will there be movement or agreement if you keep talking?

5 MR. KESSLER: No.

6 THE COURT: Let me see if I can find, unless someone  
7 has the copy of the Rosenfeld agreement. I'm looking at  
8 document number 468-1 in our docket.

9 MR. KESSLER: There is orange and yellow.

10 THE COURT: Yes.

11 MR. KESSLER: On the first page.

12 THE COURT: Yes.

13 MR. KESSLER: The first paragraph in orange everyone  
14 agrees to redact.

15 THE COURT: All right. Paragraph two, first orange  
16 is agreed to by the parties.

17 MR. KESSLER: Every agrees. The second paragraph  
18 we'll agree not to redact except for the names of the  
19 witnesses, which we won't redact.

20 THE COURT: What I'm thinking is you can put a  
21 bracket in with ellipses just saying testimony under oath was  
22 heard from and give the number of witnesses. Is that  
23 acceptable?

24 MR. KESSLER: Yes.

25 MR. CHAN: Yes.

DELZOTTO - CROSS - MR. BRODSKY

1 MR. KESSLER: On the next page, it might make, the  
2 top paragraph is one of the two we don't agree on, but it  
3 might make sense to come back to that at the end when the  
4 Court has a better sense of what is in and what is out.

5 THE COURT: I think I would, reading it --

6 MR. KESSLER: We want it out.

7 THE COURT: -- this was a paragraph that I thought  
8 should come out. It's basically saying that these are facts  
9 that have been found to be true and necessary. It's  
10 characterizing the fact finding, almost vouching for the  
11 arbitrator's findings. And vouching for the care and full  
12 consideration of the arbitrator, which may, you know, mislead  
13 the jury into thinking that an arbitrator has made this  
14 careful finding and that they, therefore, should defer and not  
15 make their own independent findings. I think that that's not  
16 an appropriate statement. It should come out.

17 MR. CHAN: Just to that, to make the record, I think  
18 that our position is that it just sets forth what it was that  
19 the arbitrator did is to find facts. We're not disputing that  
20 that happened. We're keeping in some facts found by the  
21 arbitrator.

22 MR. KESSLER: The entire conceit here, the  
23 background of this, none of this should come in. It's all  
24 hearsay, except if it has some relevance to operative portion.  
25 The fact that the arbitrator found facts doesn't effect this.

DELZOTTO - CROSS - MR. BRODSKY

1 Certainly the fact that the arbitrator made determinations as  
2 to credibility, that arbitrator found facts to be true, there  
3 are conclusions the arbitrator has given full careful  
4 consideration of the record.

5 THE COURT: It's inappropriate to have this before  
6 the jury and I'm going to rule that page two the first full  
7 paragraph in orange should come out. What about the heading  
8 that follows?

9 MR. KESSLER: I don't think we talked about that. I  
10 think the headings can come out. Ultimately there will be  
11 only about two paragraphs effects by agreement.

12 MR. CHAN: I think the heading, because there is  
13 text, that we agreed to keep in. It makes sense to keep the  
14 heading.

15 THE COURT: Well, okay, I just, let me make sure  
16 we're consistent. Because, so, for example, on page three  
17 we're deleting the heading but put in the substance. I just  
18 think --

19 MR. KESSLER: Both parties have redacted the heading  
20 in the proposal we're fine with keeping the heading out.

21 THE COURT: Out.

22 MR. CHAN: I'm saying to the extent we agreed to  
23 keep out headings because the entire portion under the heading  
24 is out. And so to the extent there is language in, we should  
25 keep the heading in, so it preserves the organization if we're

DELZOTTO - CROSS - MR. BRODSKY

1 already going to have the language in.

2 THE COURT: I'm pointing out on page three you have,  
3 there is a heading that is coming out, I believe that is --

4 MR. CHAN: We met with the Government last night to  
5 keep that in, agreement is reached.

6 THE COURT: Yes, you're keeping it in?

7 MR. CHAN: That's what we agreed last night.

8 MR. KESSLER: That's fine.

9 THE COURT: Back to page two, heading claimants  
10 invest in Shkreli entities is staying in.

11 MR. KESSLER: That's fine. Then we all agree with  
12 the orange redaction in the next paragraph, starting at  
13 Rosenfeld and going several lines down to public.

14 THE COURT: Okay.

15 MR. KESSLER: We agree that the footnote which talks  
16 about citations is fine not to redact.

17 THE COURT: Not to redact.

18 MR. KESSLER: Yes.

19 THE COURT: So that stays.

20 MR. KESSLER: We agree with the orange, sorry, the  
21 heading and the two paragraphs at the top of page three should  
22 come out.

23 THE COURT: Wait a minute, we've got on page two in  
24 yellow.

25 MR. KESSLER: Also, we agree on that to take it out.



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1 THE COURT: All right, page three.

2 MR. KESSLER: We agree the first heading, first two  
3 paragraphs, should come out based on the discussion we just  
4 had. The second heading agreement is reached. Then the first  
5 paragraph should come in. Then the rest of the page should  
6 come out.

7 THE COURT: Okay.

8 MR. KESSLER: Page four we all agree everything  
9 comes out. Page five I think we've agreed that the top  
10 paragraph in orange can come in.

11 THE COURT: So does that include the heading as  
12 well?

13 MR. KESSLER: Sure.

14 THE COURT: The parties claim the Rosenfeld Park  
15 Avenue claims, that stays in.

16 MR. KESSLER: Yes, then everything else out.

17 THE COURT: The heading plus the first full  
18 paragraph stays in.

19 MR. KESSLER: Right.

20 THE COURT: Then everything that follows in on the  
21 page comes out.

22 MR. KESSLER: Page six, the top paragraph in yellow  
23 comes out. The first paragraph under analysis and findings in  
24 orange comes out.

25 THE COURT: Wait a minute. I just think, I think

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1 again, the antecedent clause, "upon careful consideration and  
2 review of the evidence and arguments," I think is a little  
3 self-serving on the part of the arbitrator. We can start with  
4 arbitrator finds and declares, and leave in the heading that's  
5 with Roman numeral IV.

6 MR. CHAN: I have the same objection as to the  
7 prior, as to the other paragraph you struck for the same  
8 reason for the record.

9 THE COURT: I'm sorry?

10 MR. CHAN: The same objection to striking that  
11 clause for the same reasons I objected to the prior paragraph  
12 that the Court previously ruled.

13 THE COURT: Next we have --

14 MR. KESSLER: We all agree.

15 THE COURT: The rest of the page.

16 MR. KESSLER: The short paragraph.

17 THE COURT: Under heading four.

18 MR. KESSLER: That begins the arbitrator addresses,  
19 that comes out. Then we disagree about the next two  
20 paragraphs, then we agreed on everything else in the document.

21 MR. CHAN: Well, so --

22 MR. KESSLER: There is one more that we agree on,  
23 but we need to change.

24 THE COURT: There is a disagreement under subheading  
25 A, breach of contract.

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1 MR. KESSLER: Right.

2 THE COURT: Then two paragraphs. Let me read that  
3 please.

4 MR. KESSLER: I'm happy to --

5 THE COURT: Yes, I'll hear from you. Honestly, I  
6 would be inclined to take out the first paragraph under  
7 subheading A.

8 MR. KESSLER: Our view is both paragraphs should  
9 come out. The issue is we already know the arbitrator's  
10 conclusion that there is a breach of contract claim that is  
11 coming in. All of this information is just the arbitrator's  
12 view of the facts. And frankly, the application of the facts  
13 to the law. As I said yesterday, no one could introduce the  
14 transcript of this arbitration to get these facts in, they'd  
15 be hearsay. We couldn't call, there was an objection to  
16 Mr. Geller's consulting agreement coming into the record until  
17 Mr. Geller testified under the grounds that I think everyone  
18 agreed on that you can't prove whether or not services were  
19 provided and whether or not a consultant engaged in a sham or  
20 not without the consultant testifying. That was different  
21 than the settlement agreement. This is two extra layers of  
22 hearsay on top of that. It is not necessarily to understand  
23 the legally operative value of this document, which is in the  
24 last page, which is there was a breach of contract claim, the  
25 claim was found a certain way and certain damages were

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1 awarded. Especially since Dr. Rosenfeld, if there is a case,  
2 right, if there is a defense case, then presumably the  
3 defendant would offer this and it sounds like they are going  
4 to call Dr. Rosenfeld. So it's particularly improper to have  
5 an arbitrator's view of the impact of testimony from  
6 Dr. Rosenfeld, that she heard in a different proceeding  
7 embodied in this document, when it certainly is hearsay. It's  
8 not operative. It's not the thing that determined the rights  
9 of the parties, that's the last make, and so it should come  
10 out.

11 THE COURT: Mr. Chan.

12 MR. CHAN: I disagree. The Government is rearguing  
13 the motion that it already lost on this of what the Court  
14 entertained briefing on and ruled, was that we could get in  
15 parts of the arbitration decision that explain the ruling  
16 about the consulting agreement being a legitimate agreement  
17 and there were services provided. Absent these paragraphs  
18 there is no such language in the entire thing. We have gone  
19 through this with the Government and given up on everything.  
20 You look after this it's all agreed to be redacted. This is  
21 the last portion remaining that talks about the consulting  
22 agreement being enforcement and why other than that there is  
23 no language in this. And to strike it would be basically to  
24 subvert the Court's prior ruling.

25 THE COURT: No, not actually. The first paragraph

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1 has specific findings that I did not rule should be  
2 admissible. First of all, this arbitrator had evidence before  
3 her that is not in this case. Second of all, I think having  
4 the arbitrator make the arbitrator's detailed findings would  
5 again interfere with the jury's consideration of the evidence  
6 presented in this trial. And the question that it has to  
7 resolve is whether the Government has proven beyond a  
8 reasonable doubt that one of the means to defraud Retrophin,  
9 as charged in Count Seven, was executed through sham  
10 consulting agreements. So the facts in paragraph one I think  
11 should come out.

12 What I did rule would be appropriate would be the  
13 ultimately finding. The second paragraph of that starts with  
14 the arbitrator finds that the consulting agreement is an  
15 express and enforcement agreement between the parties that was  
16 breached by Retrophin. I think the second sentence is a very  
17 minimal sentence explaining the bases that the agreements  
18 demands were minimal but they were met.

19 MR. KESSLER: My only concern with that sentence is  
20 the arbitrator's interpretation of the contract, which is one  
21 thing. Then the fact that they were met is the arbitrator's  
22 interpretation of all the testimony at the trial that  
23 Dr. Rosenfeld did in fact perform services, something that may  
24 not be uncontested if Dr. Rosenfeld decides to testify. And  
25 so again, there is the arbitrator vouching for the truth of

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1 certain statements.

2 I agree with the Court that the first sentence I  
3 think does fairly layout the arbitrator's determination. The  
4 point is on the less is more idea. It's the reasoning that's  
5 the problem, because call it whatever we want, in closing this  
6 will be used to prove that Dr. Rosenfeld performed services.

7 (Continued following page.)

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## PROCEEDINGS

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2 THE COURT: What I wanted to avoid are statements  
3 that touch upon issues that are before the jury to decide.  
4 And we are going to have if, I expect the defense puts on a  
5 case, we're going to have experts talking about what is  
6 typical in a consulting agreement and whether or not those who  
7 are being compensated for consulting services have to perform  
8 at some minimal level or not. I think that the second  
9 sentence does touch on facts that were before the arbitrator  
10 and that would also have to be decided by the jury --

11 MR. CHAN: Well, I think --

12 THE COURT: -- so --

13 MR. CHAN: But just to --

14 THE COURT: I'm listening.

15 MR. CHAN: On the flip side of Mr. Kessler's  
16 argument too little is not enough. And so the arbitrator's  
17 award in this case was both that there was a valid agreement  
18 and that it was breached. The second sentence, in one  
19 sentence, as the Court pointed out in a brief sentence,  
20 articulates the basis of the breach award. I mean, we're  
21 keeping in the fact that there was monetary damages awarded as  
22 part of this, you can only get monetary damages --

23 THE COURT: I am not sure I am going to agree to  
24 that.

25 MR. CHAN: That's what the parties agreed to.

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1 THE COURT: Yes. But it seems to me that the  
2 monetary award is somewhat of a distraction and it's not at  
3 issue here. It's irrelevant to any issues.

4 MR. KESSLER: The question is what is the relevance  
5 of this document. The reason we objected to it originally is  
6 the document itself is not relevant at all. If this were a  
7 dispute about whether there were an enforceable agreement  
8 against Dr. Rosenfeld it would be a relevant consideration,  
9 it's not.

10 THE COURT: It goes to the defense that these were  
11 not sham consulting agreements and at least one neutral party  
12 has found that it was a valid agreement and I think that's  
13 what they want to proffer.

14 MR. KESSLER: That's importing another decider --

15 THE COURT: I know.

16 MR. KESSLER: -- to vote about the actual -- or it's  
17 not actually the ultimate issue, but it is a hotly contested  
18 issue in this case.

19 If Dr. Rosenfeld testifies, presumably, he will say  
20 I performed services. So we will be now in a situation where  
21 the jury has not just Dr. Rosenfeld's testimony but some  
22 arbitrator's view that this testimony is, in fact, accurate.  
23 This is bootstrapping argument --

24 MR. CHAN: Except for -- sorry.

25 MR. KESSLER: That's my fault I apologize.



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1 I have one more. It's a bootstrapping argument.  
2 The defense is asserting the document is relevant and then  
3 saying they have to have all these things in here to explain  
4 it. But the relevance under the 803.15 exception is just to  
5 the operative part. It is to show that if Retrophin refused  
6 to pay this award, there is an enforceable award. Or someone  
7 was on notice that the arbitrator ruled for Dr. Rosenfeld.  
8 It's not this bootstrapping situation where the award is  
9 irrelevant but it's sort of coming in a little bit, and then  
10 you argue that a lot more come in to explain the other side.

11 THE COURT: I am concerned about the arbitrator's  
12 factual determination that's reflected in the second sentence.  
13 She's making findings based on her record, which is different  
14 from the record here. And the other thing I think the parties  
15 haven't really addressed is there is certainly a different  
16 standard of proof. I think that the less, as I said, less is  
17 more. The less we have that touches on findings that are  
18 similar to the findings that a jury in this case have to make,  
19 the better off we would be to avoid confusion. The jury  
20 should be making its own findings putting the government to  
21 its proof based on the record before this Court and not  
22 abdicating its fact-finding mission to determine the bona  
23 fides of the consulting agreement based on what an arbitrator  
24 may have found in the way of facts.

25 MR. CHAN: I agree on less is more, Your Honor,

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1 which is why we agreed to redact 99.9 percent of this award.  
2 What we're leaving in is the one sentence of that paragraph  
3 right now and I want to give the Court its own ruling on this  
4 issue already.

5 At page 104 of the pretrial conference where the  
6 Court said, and I'm quoting, what I am looking at is the terms  
7 of this agreement and I think that this is decision can come  
8 in but it has to be a balanced submission. So as much as the  
9 rights and the rights of the parties would be admissible in  
10 terms of what you have just articulated that there was an  
11 arbitration, that Dr. Rosenfeld wanted to enforce the  
12 agreement, that the arbitrator found that he had given minimal  
13 services in exchange for the consideration that he received  
14 and it is rejecting the sham argument of Retrophin and ruling  
15 that Retrophin owed him money. I think that the  
16 qualifications that she made also would have to, in fairness,  
17 be admissible as to what she did not find.

18 So I think we understood the Court's clear ruling  
19 that those were the specific enumerated items from the award  
20 that we could get in, we adhered to that admonition to be as  
21 minimalist as possible and it goes to that. And so what the  
22 Court is now articulating and the government is arguing, is  
23 contra -- contrary to what the Court's express ruling was on  
24 the record at that pretrial conference.

25 MR. KESSLER: Your Honor, I understood the pretrial

## PROCEEDINGS

1 conference to be the Court's view at that time, not a  
2 preclusive ruling that, you know, the parties could not view  
3 once the record was in. We actually had the proposed  
4 redactions. We understand the scope of the case, we  
5 understand the evidence. I mean, that was my view rather than  
6 the Court saying under no circumstances can the award have any  
7 more or less than what the Court was saying at the pretrial  
8 conference.

9 But in any -- even if that was the view at the time  
10 and it was a firm view, I think it's clear now what the issues  
11 are. And if Dr. Rosenfeld testifies, as defense says he is,  
12 the jury may well have to decide if he, in fact, provided  
13 service and if the demands of the contract were met. It would  
14 be -- I don't understand how he could testify and have  
15 anything of conceivable relevance to say unless it's exactly  
16 these issues. I mean, frankly, if he testifies it's not even  
17 clear this award should come in at all.

18 THE COURT: I agree.

19 MR. KESSLER: But that's something we can revisit at  
20 the time of his testimony.

21 MR. CHAN: Your Honor, I think we would agree, in  
22 the spirit of compromise, we will agree that paragraph 1,  
23 right, we can keep out, because it doesn't go to that, but the  
24 next six lines -- and these are the only six lines we're  
25 asking for to be left into this award that go to the specific

## PROCEEDINGS

1 items enumerated in the Court's ruling. So these are only six  
2 lines and we've agreed to redact, you know -- this is over 15  
3 pages of rulings.

4 MR. KESSLER: With respect, Your Honor, we're trying  
5 to compromise, we compromised on a bunch of things already,  
6 but if it's inadmissible, it's inadmissible. We are going to  
7 have situation where Dr. Rosenfeld testifies and there is  
8 another person who has already -- the jury will have someone  
9 else's view of his testimony.

10 THE COURT: I do think that we can revisit the  
11 admissibility of this award if Dr. Rosenfeld testifies because  
12 that's really what the jury should be paying attention to.

13 MR. KESSLER: I agree.

14 THE COURT: So if he does testify, which the defense  
15 is still trying to sort out, this award is really superfluous  
16 and doesn't really need to be in the record.

17 MR. KESSLER: I agree with that. My point is just,  
18 in any event, this sentence shouldn't come in because it is --  
19 for all the reasons we said, it is the arbitrator's  
20 interpretation of evidence at the trial.

21 THE COURT: I mean, look, I think sometimes there's  
22 a danger in thinking out loud, which is what I'm doing here at  
23 page 104 of the transcript. I think sometimes parties  
24 appreciate the Court's preliminary view before full briefing  
25 just to get a sense of what issues they might want to address

## PROCEEDINGS

1 or emphasize if they are going to be making more fulsome  
2 arguments or submissions on a given topic. I know that in  
3 fact in the Northern District of California it's quite common  
4 for judges to give sort of a preliminary preview of which way  
5 they are leaning on a given issue and asking the parties to  
6 prepare to come in and address those issues in oral argument.

7 My view, and it continues to be my view that we need  
8 to be very careful, very mindful not to insert the jury's  
9 function here, which is to look at the record as it is in this  
10 case and decide the issues in dispute. And my concern is that  
11 while the ultimate decision regarding the consulting agreement  
12 being an enforceable one and breach by Retrophin is  
13 appropriate because it determines the rights of Retrophin and  
14 Dr. Rosenfeld, the findings are based on an entirely different  
15 constellation of evidence that is not before this Court or  
16 this jury. And my concern is that they will be giving undue  
17 weight to the findings of the arbitrator, which really isn't  
18 appropriate no more than it would be for them to consider  
19 anything else that wasn't presented here in this courtroom.

20 I recognize and appreciate, Mr. Chan, you pointing  
21 out what I said on the date of this pretrial conference which  
22 seems like decades ago at this point. When this was this?

23 MS. RUBIN: October 6th, Your Honor.

24 MR. KESSLER: October 6th.

25 THE COURT: Well, a lot of submissions have come

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1 through and including other sort of efforts regarding, one,  
2 whether the defense was going to have a case, two, whether  
3 Dr. Rosenfeld would be called, three, whether documents have  
4 been provided to the government if the defense intends to use  
5 in its case in chief. We've had so many submissions.

6 I do think that adding the second sentence of the  
7 second paragraph on page 6 under the heading Claims by  
8 Rosenfeld would again touch on too many of the issues in  
9 dispute, or the issues in dispute and it probably would be  
10 better to redact the second sentence. Not probably, I'd like  
11 to say it should be. Because you're going to have experts who  
12 are going to talk about these types of agreements with  
13 Dr. Rosenfeld or other recipients of these types of agreements  
14 could or do given the language of the agreements, and so it  
15 does seem to be really inappropriate to provide those  
16 statements to the jury, left it leading to findings that are  
17 not based on the trial of evidence.

18 MR. CHAN: I understand.

19 THE COURT: So we will delete the second sentence of  
20 this paragraph starting with "Although the agreements demand"  
21 and the rest I think the parties have agreed that the  
22 remainder of page 7 should come out.

23 MR. CHAN: But those last two lines of that  
24 paragraph in?

25 MR. KESSLER: "In addition as discussed more fully"

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1 and then the last sentence I guess so it makes sense, "in  
2 determining the claims."

3 THE COURT: We will agree -- the parties have agreed  
4 to leave in the last two sentences of that paragraph, right?  
5 So what we are talking taking out is just one sentence in that  
6 paragraph.

7 MR. CHAN: Correct.

8 MR. KESSLER: I think it's two, although it's  
9 actually hard for me to tell if there is a semicolon after  
10 proven value or a period on the top of page 7.

11 MR. CHAN: You're right, it's two sentences.

12 MR. KESSLER: I started scribbling, so I can't tell.

13 MR. CHAN: Proven value period Retrophin.

14 THE COURT: The parties are all right with leaving  
15 in, "in addition as discussed" in the following sentence, is  
16 that right? Or did you want to leave in --

17 MR. KESSLER: Given that we're taking out the other  
18 discussion in the counterclaims I guess our view would be to  
19 take it out, but I understand if the Court has a different  
20 view.

21 MR. CHAN: I think that's just a conclusory ruling  
22 which we're also keeping at the end for the traditional part  
23 of the judgment which is wherefore the following --

24 THE COURT: Be clear, what are we doing, folks?

25 MR. CHAN: I vote to keep it in.

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1 THE COURT: We're taking out the second sentence of  
2 this paragraph. It is third sentence that starts, "Retrophin  
3 failed to pay what I was owed."

4 MR. KESSLER: So we're taking that out and we'll  
5 leave the last two.

6 MR. CHAN: Correct.

7 THE COURT: All right.

8 MR. KESSLER: Then everything in yellow on page 7  
9 comes out.

10 THE COURT: Right.

11 MR. KESSLER: Everything in yellow on page 8 comes  
12 out.

13 Everything in yellow on page 9 comes out.

14 THE COURT: Yes.

15 MR. KESSLER: Everything in yellow on page 10 comes  
16 out.

17 We had agree to leave the paragraph in orange in,  
18 although I understand if the Court has a view -- I guess this  
19 one doesn't have the damages. So we had agreed that the  
20 paragraph in orange stays in.

21 THE COURT: All right.

22 MR. KESSLER: Then everything else in yellow comes  
23 out.

24 On page 12 we agreed that everything in yellow comes  
25 out. The one paragraph that's not highlighted is essentially



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1 just the same thing as the paragraph we saw on the previous  
2 page.

3 THE COURT: You want to leave it in or just strike  
4 it as duplicative.

5 MR. KESSLER: It's fine.

6 THE COURT: Leave it in?

7 MR. CHAN: Yes, please.

8 MR. KESSLER: On page 13, we had agreed that  
9 everything in yellow and orange comes out.

10 THE COURT: Okay.

11 MR. KESSLER: Then in addition, if the Court sees  
12 there's three sentences that are not highlighted in the middle  
13 that start "Shkreli," the third of those sentences which  
14 begins "Neither Shkreli's indictment nor the consulting  
15 agreement constitutes prima facie evidence of wrongdoing,"  
16 given the recent concerns about Shkreli's case we thought we  
17 might just take that sentence out too.

18 THE COURT: I think so too. Don't you agree,  
19 Mr. Chan?

20 MR. CHAN: Yes, sure.

21 THE COURT: So in the non-highlighted portion of  
22 this paragraph we will just include the first two sentences  
23 and that's it.

24 MR. CHAN: Correct.

25 MR. KESSLER: Correct.

## PROCEEDINGS

1           Then on page 14 we agreed that all --

2           MR. CHAN: All unredacted.

3           MR. KESSLER: All the highlighting would come out so  
4 the sentences -- or the provisions would stay in. And then  
5 this is I think the place where the damages are if the Court  
6 wanted to address that.

7           THE COURT: I'm wondering why they're relevant to  
8 anything in this case.

9           MR. KESSLER: We're for taking everything out.

10          THE COURT: Mr. Chan, you want to make a pitch?

11          MR. CHAN: I think that it would be permissible to  
12 take out the amount but leave -- it's sort of like is it worth  
13 the hassle of taking out one word in the sentence. So it  
14 would be claimants have established their claim for breach of  
15 the consulting agreement and awarded damages, period. Versus  
16 leaving the amount in. I'm happy to do it either way. It's  
17 the only instance in which we redact one part of a sentence  
18 from this entire thing, so either way is fine.

19          MR. KESSLER: We are going to redact the witnesses.  
20 But we're happy to defer to the Court.

21          THE COURT: How about paragraph 1, we just use let's  
22 see --

23          MR. CHAN: That's fine.

24          THE COURT: So award of damages and that's it.

25          MR. CHAN: Okay, and the same for two.

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1 THE COURT: Do we need interest?

2 MR. CHAN: Well, what if we just said claimants are  
3 entitled to interest, that's it.

4 THE COURT: Okay, period.

5 MR. CHAN: Yes.

6 THE COURT: Okay. Do you want number nine?

7 MR. CHAN: We had agreed to leave it in, it's fine.

8 THE COURT: All right.

9 MR. KESSLER: Then the page 15 we didn't have an  
10 objection to leaving that in but I don't have a view one way  
11 or another.

12 MR. CHAN: It's just the arbitrator's signature on  
13 the award.

14 THE COURT: That's fine.

15 MR. KESSLER: Then we all agreed the last two pages  
16 come out.

17 MR. CHAN: Agreed.

18 THE COURT: Okay.

19 Now my clerk was just raising an issue back on  
20 page 13 where the paragraph that was unredacted starts,  
21 "Shkreli was not a party or witness in these proceedings and  
22 was not represented by a surrogate. The legality or  
23 illegality of his and Greebel's conduct is being assessed in a  
24 proceeding in a different forum."

25 Are the parties sure they don't mind leaving that

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1 in, or they don't have any concerns about Mr. Shkreli's --

2 MR. CHAN: I think that given -- I think we had  
3 originally felt that those gave context to the third sentence,  
4 so if we're taking out the third sentence I'd say for the sake  
5 of completeness take it all out.

6 MR. KESSLER: I don't have an objection to taking  
7 the Shkreli part of his and.

8 THE COURT: So it would say, the legality or  
9 illegality of -- it would read, and Greebel's.

10 MR. KESSLER: Well, Greebel's, take out the "and."

11 MR. CHAN: This clearly refers to this case, Your  
12 Honor, now that I look more carefully at it.

13 MR. KESSLER: But that's exactly the point.

14 MR. CHAN: But if we can't get in the fact -- if the  
15 government is asking us to take out parts where we can make --  
16 where there are references to something that the fact finder  
17 can improperly rely on and we're not allowed to make that  
18 argument based on that language, why do they need the  
19 clarification in here to make sure that it is expressed that  
20 this has nothing to do with this case?

21 MR. KESSLER: Because there will be an argument that  
22 these facts establish innocence not guilt.

23 MR. CHAN: That can be established by the  
24 establishment of the part of the sentence that says they were  
25 not parties to the arbitration.

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1 MR. KESSLER: It says Shkreli.

2 THE COURT: It's a bit of a disclaimer I think just  
3 saying, look, whatever is going on with these two, Mr. Shkreli  
4 and Mr. Greebel is not being assessed, acknowledging that  
5 there is a separate proceeding and --

6 MR. KESSLER: It's neutral.

7 MR. CHAN: The problem is by only leaving  
8 Mr. Greebel in that sentence it implies the arbitrator was  
9 only concerned with one other proceeding.

10 THE COURT: Right.

11 MR. CHAN: I don't think the government is harmed by  
12 the removal of these sentences.

13 MR. KESSLER: Well --

14 THE COURT: The first -- these three sentences.

15 MR. KESSLER: Well, I think the first sentence there  
16 is no dispute about that, that sort of doesn't implicate what  
17 we're talking about. I understand Mr. Chan's argument. I,  
18 frankly, just haven't thought it through. Perhaps if possible  
19 we can just think about it and get back to Mr. Chan tonight if  
20 we have a problem with taking it out.

21 THE COURT: All right. So the first sentence of  
22 paragraph 2 under the heading "A, aiding and abetting," will  
23 be deleted and the parties are going to talk about whether or  
24 not the second sentence will remain or not; is that right?

25 MR. KESSLER: I think the first sentence stays and

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1 we'll talk about the second sentence.

2 THE COURT: Oh, I'm sorry.

3 MR. KESSLER: The first sentence doesn't -- it just  
4 establishes that Shkreli was not a party. That doesn't say  
5 anything about proceedings, about legality or illegality.

6 This may also be the sort of thing we can resolve  
7 with a stipulation about...

8 THE COURT: Right, the third sentence you both agree  
9 should come out?

10 MR. KESSLER: Agreed.

11 THE COURT: Right?

12 MR. CHAN: Yes.

13 THE COURT: So the question is whether or not the  
14 second sentence stays in --

15 MR. KESSLER: Yes.

16 THE COURT: -- right?

17 MR. CHAN: Yes.

18 MR. KESSLER: Yes.

19 THE COURT: All right. So you let me know tomorrow.

20 MR. KESSLER: Yes. Almost resolved one for you.

21 MR. CHAN: Do you have experts?

22 MR. KESSLER: So if Dean Ferruolo is testifying  
23 tomorrow, then we still do have -- we have an issue with his  
24 disclosure. If he's not testifying tomorrow, we can raise it  
25 tomorrow.

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1 THE COURT: Well, we don't have that straightened  
2 out, he can't testify tomorrow, so...

3 MR. CHAN: I don't understand what -- the only thing  
4 to straighten out is for the Court to rule, right, on whatever  
5 their objections are.

6 MR. KESSLER: Right.

7 MR. CHAN: I don't think there's anything more for  
8 me to --

9 THE COURT: Yesterday weren't you going to be  
10 further --

11 MR. KESSLER: Right.

12 THE COURT: Further --

13 MR. KESSLER: So we had objected yesterday to the  
14 new opinion related to lockup agreements, although it seemed  
15 like part of it might not have been related to lockup  
16 agreements and we'd asked for supplemental disclosures about  
17 in particular the last sentence of the opinion, which said,  
18 companies --

19 THE COURT: Which document are you referring to?

20 MR. KESSLER: 466.

21 THE COURT: Document number 466.

22 MR. KESSLER: December 2nd letter. So on the fourth  
23 page much of the supplemental opinion related or discussed  
24 lockup agreements. Then the last sentence after preamble  
25 said, the opinion would be companies may reasonably allocate

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1 those shares, meaning free trading shares, to individuals who  
2 are friendly to the company and share the same goal of  
3 creating an orderly and stable market.

4 And we had sought a supplemental explanation of  
5 whether that related to lockup agreements or not or what the  
6 basis of that opinion actually was.

7 THE COURT: We don't have a lockup agreement here,  
8 do we?

9 MR. KESSLER: No.

10 MR. CHAN: Well, so this is what our expert would  
11 say --

12 THE COURT: It's not even in the case.

13 MR. CHAN: It is in the case and this is why I would  
14 explain why it is in the case. The government --

15 THE COURT: I'm missing something, I'm sorry.

16 MR. CHAN: What's that?

17 THE COURT: I'm obviously missing something.

18 MR. CHAN: The government has argued from its  
19 opening statement that a conspiracy to not sell shares is  
20 unlawful. And so our expert would testify that, in fact,  
21 there are some cases where an agreement not to sell is  
22 perfectly lawful and encouraged in fact by the SEC and that  
23 the Second Circuit has ruled is proper and actually not the  
24 basis of 13D filing. That 13D definition of control does not  
25 apply to a lockup agreement.



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1           So our argument, based on the opinion of the expert  
2 and to educate the jury, is in fact there are some instances  
3 when a bunch of people can get together and say we all promise  
4 not to sell for the express purpose of not collapsing the  
5 price of a company stock immediately after going public event.

6           So in order to respond to the government's argument  
7 to the jury that merely agreeing not to sell stock is  
8 unlawful, we should be entitled to put evidence in front of  
9 the jury that, in fact, merely agreeing not to sell stock can  
10 be okay and the government okays it.

11           So what our expert will testify is, there are lockup  
12 agreements in the IPO context, that is established.  
13 Similarly, those kinds of agreements or discussions about not  
14 selling stock in order not to collapse the price of stock, can  
15 also apply to a post reverse merger context which is similarly  
16 a going public event. So that sort of the testimony of the  
17 expert analogizing from a lockup agreement context in an IPO  
18 context to a reverse merger context.

19           If the government is saying it won't argue that an  
20 agreement not to sell is unlawful, then I would agree it might  
21 be different, but from their opening statement they sought to  
22 argue to the jury that Count Eight was an unlawful conspiracy  
23 amongst the Fearnow share recipients and Mr. Shkreli and  
24 Mr. Greebel to not sell the stock, because in Mr. Kessler's  
25 own words, if the free trading shares had been sold quickly,

## PROCEEDINGS

1 the price of Retrophin might have collapsed and the company  
2 could have gone under. If there was no company, there would  
3 be no money nor source of funds to pay back the defrauded  
4 investors and no one to pay the bills of the defendant.

5 So the government is make the argument and  
6 impression to the jury that you can't agree not to sell stock.  
7 What we're trying to say, through this expert and other  
8 evidence, is that you can agree not to sell stock in certain  
9 circumstances and this is one of them.

10 THE COURT: But an IPO is a different kind of  
11 vehicle than a reverse merger and I am not sure that you can  
12 just say they're analogous. I am not an expert in securities,  
13 but an IPO I think, from what I understand, is when you offer  
14 shares publicly and some insiders, employees are allowed to  
15 get a certain number of shares or certain pricing and they are  
16 committed formally in exchange for those shares not to sell  
17 them for a set period of time.

18 The reverse merger situation here I don't know that  
19 there was anything formalized with regard to the shares that  
20 Mr. Shkreli's close associates received and I am just not sure  
21 that a lockup agreement is going to be more confusing to the  
22 jury than whatever else Mr. Ferruolo may want to talk about.

23 (Continued on the next page.)  
24  
25

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1 (Open court; no jury present.)

2 MR. KESSLER: Your Honor, I still -- frankly, this  
3 is my issue with the disclosure, it sounds like Dean  
4 Ferruolo's opinion is that in one context that is not this  
5 case, if you have a written lockup agreement, which the SEC  
6 web site which he relies on, requires to be disclosed to the  
7 market, and I am not securities lawyer, but my understanding  
8 there's a lot involved in a lockup agreement, because you can  
9 do that, the jury should understand that not all agreements  
10 not to sell are -- no one's arguing that all agreements not to  
11 sell in any context are a problem. You can do things legally,  
12 you can do things unlegally. I'm pretty certain if you had a  
13 lockup agreement and you didn't disclose it, that would be a  
14 big problem, too.

15 So, you know, regardless of the intricacies of the  
16 securities laws, one way or another, if Dean Ferruolo is going  
17 to come in here and his testimony is that individuals can get  
18 together, not tell anyone, and agree amongst themselves to  
19 have a compact, a private secret compact not to sell shares --

20 THE COURT: I don't know that it was even not to  
21 sell. It was don't, you know, on the one hand, they were  
22 being told trade and pump up the volume, and on the other hand  
23 they were told don't share without my approval. I mean, the  
24 idea was the control.

25 MR. KESSLER: Whatever they were being told. The

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1 point is, if individual -- if he's going to come in and say  
2 individuals can get together and have a secret agreement  
3 about, you know, shares that they don't disclose in a public  
4 market, I would be curious to hear that opinion. But it  
5 doesn't actually sound like that's his opinion.

6 MR. CHAN: That would be the opinion, because it is  
7 absolutely not securities law of fact that all lockup  
8 agreements must be disclosed. Lockup agreements occur in  
9 other private transactions involving companies, including M&A  
10 transactions and other transactions involving the issuance of  
11 stock or private offerings by companies. And in those cases  
12 the SEC rules don't require their disclosure. So the  
13 disclosure argument is a red herring.

14 What really makes this case -- what makes lockups,  
15 and the concept of lockups at issue here, is the government's  
16 argument that there cannot be a legitimate reason for these  
17 people to get together and say "let's not sell the stock," for  
18 Mr. Shkreli to say, "hey, guys, please don't sell the stock  
19 because if you do, the company's going to tank." The fact of  
20 the matter is, that request, "don't sell the stock after a  
21 public -- a company goes public," which is true equally in  
22 reverse merger context or an IPO context, because on day zero,  
23 they're not public, on day one they are public, and all the  
24 sudden there's shares on the market, and people have an  
25 interest in trying to prevent in those first few months after

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1 the day one of going public, of the stock going -- tanking.

2 And so to have a group of people have that  
3 conversation and share desire to not have stock go down  
4 immediately after a company goes public, should not -- the  
5 logic of it is not limited to an IPO. Because the logic of  
6 the rule in the IPO context is about preserving, this is the  
7 SEC's own words, in an amicus brief they filed in the In Re  
8 Facebook case in the Southern District of New York, which is  
9 affirmed on the Second Circuit, which found in that case that  
10 lockups are permissible, and that they do not violate 13D, and  
11 they do not constitute control for purposes of 13D.

12 So, our expert will give the jury the context of the  
13 corporate world, where lockups can be done, and the people  
14 agreeing not to sell stock are operating in that world.

15 MR. KESSLER: Your Honor, none of that is in the  
16 supplemental disclosure. There's no reference to a 13D as the  
17 basis for his opinion, there's no reference to a Second  
18 Circuit case. There's nothing about this other stuff. And,  
19 frankly, there's no lockup agreement in this case. You know,  
20 if Dean Ferruolo is going to come in and say a bunch of people  
21 can get together and that's a lockup agreement, I'd like to  
22 know in advance that that's his testimony, because we are  
23 certainly going to want to question him about that.

24 THE COURT: Look. It seems to me that every time we  
25 have one of these discussions about what the experts will say,

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1 little nuggets come tumbling out of the defense counsel's  
2 mouth about additional things that this expert may or may not  
3 say, and I think it is somewhat difficult -- it is like the  
4 shifting landscape, and I don't know how that type of  
5 disclosure is consistent with what the rules require, and  
6 whether it creates a very difficult situation for anyone who's  
7 trying to prepare for cross-examination of an expert.

8 You know, if you haven't disclosed it by now, maybe  
9 he doesn't testify about it. Because at some point we have to  
10 draw a bright line and say whatever's not disclosed is  
11 precluded. And if it is not in his disclosures, he's not  
12 going to be able to say it.

13 MR. CHAN: I disagree. I think it's in disclosure.  
14 I think that what's not in the disclosure are verbatim answers  
15 that Mr. Kessler posing right now that I'm trying to answer  
16 and put words in his mouth. A summary of his testimony is not  
17 supposed to be his 3500 material. A summary of his testimony  
18 is not supposed to be a roadmap of every word he's going to  
19 say. The topics are summarized in here. We are no less  
20 detailed than the government is in their own rebuttal expert  
21 disclosures.

22 THE COURT: You all agreed they shouldn't have to do  
23 much of that until they hear from your experts because they  
24 are on rebuttal.

25 MR. CHAN: I don't agree with that, but --

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1 THE COURT: Well, Mr. Brodsky made that statement,  
2 I think, quite some time ago, but it would be nonsensical in  
3 some ways to expect the government to reveal rebuttal experts  
4 when they haven't even, A, don't know whether you're going to  
5 call rebuttal experts, B, the defense experts were in the  
6 process of formulating their opinions and still conducting  
7 their methodologies, whatever they may be, to try to come to  
8 an opinion. And so to require the government to try to  
9 respond to something in that confused uncertain landscape  
10 would be grossly unfair and in violation, I think, of what the  
11 rules would require.

12 MR. CHAN: I think it depends. I mean, if the  
13 expert's opinion is going to be the opinion of 13D, that's not  
14 an unfair expectation for them to tell us what that expert is  
15 going to say. If the expert can't -- I agree, if the expert  
16 can't say, Dean Ferruolo is wrong about "X," because he  
17 doesn't know what Dean Ferruolo is going to say. If they  
18 already know that the topic in this case is going to be the  
19 function of a rule or the function of the form -- but I am not  
20 here to argue the rebuttal.

21 THE COURT: They are trying to understand this whole  
22 lockup business, which I think I am hearing them say hasn't  
23 been explained, at least in Dean Ferruolo's disclosures. You  
24 may have done a more artful detailed job of that.

25 MR. CHAN: Okay. I understand. I mean, I

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1 understand that we -- if we don't supplement this disclosure,  
2 there might be an adverse result from that, and we will take  
3 that into consideration.

4 THE COURT: Well, I think that's what the cases  
5 require me to do. I don't like precluding people, especially  
6 defense lawyers, but, you know, the rules are the rules and  
7 fair is fair.

8 MR. CHAN: Okay.

9 THE COURT: All right. So is Dean Ferruolo  
10 testifying tomorrow?

11 MR. CHAN: He is our second potential witness.

12 THE COURT: All right.

13 MR. PITLUCK: Judge, on that point, if I may, we  
14 just heard from Mr. Brodsky that said, they still haven't made  
15 a decision about -- a final decision to put on their case.  
16 They haven't been able to speak to their first five witnesses,  
17 in light of the unexpected length today, which -- and he said  
18 we will tell you as soon as we know and we will press to find  
19 quickly.

20 So we still don't know who amongst the five is going  
21 to testify, we don't know if it is going -- we don't know  
22 anything, Judge, other than these are the people who are the  
23 first five witnesses, two of them are exerts, which are still  
24 pending rulings from the Court so. We may need to --  
25 depending what we find out, we may have to ask for a



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1 continuance, which is something we are horribly loath to do at  
2 this point. We are staring next Friday dead in the eyes at  
3 this point, and it seems like there's going to a lengthy case  
4 regarding -- they don't have to do it, but we've only got the  
5 first five witnesses, and we are still arguing over experts  
6 that aren't even in that five.

7 So I just wanted to put the Court on notice of that,  
8 and to respectfully ask the Court when we might be able to  
9 expect a decision on the experts, so we can kind of determine  
10 going forward which ones might be called in the next couple  
11 days, or which ones might not be able to.

12 MR. CHAN: Just to add to that, of the five  
13 witnesses, there's a second expert.

14 THE COURT: Are you awaiting my decision in order to  
15 decide which expert you want to call? Or are you -- I mean,  
16 my understanding was that the government is trying -- there's  
17 parts of the experts disclosures that they are still having  
18 issues with, where there's parts of the experts' opinions that  
19 they are objecting to. They are not asking for a flat out  
20 preclusion of anyone except Mr. Johnson?

21 MR. KESSLER: Ms. Klein, Mr. Johnson, and  
22 Mr. Minkoff, we are. But none -- the two experts who the  
23 defense has noted in their first five are not experts we are  
24 seeking to preclude entirely.

25 MS. RUBIN: Your Honor, I would be remiss, Your

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1 Honor, if I didn't say my client is urging me to remind the  
2 Court that my client will not make a final decision about  
3 whether to offer a case in chief until the government rests.  
4 And I just wanted to reiterate that on the record for the  
5 benefit of our client.

6 MR. KESSLER: And to be clear, no one is going to  
7 force that decision until the decision is appropriate, but we  
8 need to note that, if there is a case, who's first.

9 MS. RUBIN: Your Honor, we understand we have  
10 disclosure obligations with respect to our case. To the  
11 extent we are going to offer one, we intend to comply with  
12 that.

13 THE COURT: Well, can you give a time by which you  
14 must disclose it?

15 MR. PITLUCK: You did, Judge. By 6:30.

16 THE COURT: Right.

17 MR. KESSLER: To be fair, Mr. Greebel is --

18 THE COURT: Mr. Greebel is still here.

19 MR. PITLUCK: But that's not predicated on the  
20 decision. We are saying if a decision is made, and I think it  
21 is on the record a number of times, the Court ordered it this  
22 weekend, if a decision is made, we now have a very good sense  
23 of timing. Mr. Brodsky said 30 more minutes. Redirect is  
24 going to be brief. There is going to be a Rule 29 argument.  
25 Then the decision will be made. We can start as soon as

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1 tomorrow. We are saying if a case goes on --

2 THE COURT: You need to know --

3 MR. PITLUCK: -- we need to know who it is.

4 THE COURT: -- who the first witness is.

5 So, you know, is Mr. Greebel going to go back and  
6 speak in person, or can this be done by phone? I mean, I just  
7 want to know what's a reasonable time --

8 MS. RUBIN: I believe this can be done by telephone,  
9 but I do know that Mr. Greebel would like to consult with  
10 counsel this evening before making a decision.

11 THE COURT: All right. Well, you have until 7:30.

12 MS. RUBIN: Thank you, Your Honor.

13 MR. PITLUCK: Thank you, Your Honor.

14 THE COURT: Otherwise, you know, I don't want to  
15 continue this either. We need to get this finished.

16 MR. CHAN: Understand.

17 There's just two quick things. On scheduling, for  
18 purposes of planning for witnesses tomorrow, would the Court  
19 want the Rule 29 argument to happen after the government's  
20 case no matter what, or would the Court entertain the  
21 possibility of just pushing that off until after court so we  
22 can get -- use the jury time while we have the jury time  
23 tomorrow during the day. In other words, we can sort of say  
24 we are making the motion and argue it at the end of the day of  
25 tomorrow, or do you want it just to be done, get it all done

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1 and taken care of after the government rests?

2 THE COURT: You mean you would start your case, if  
3 you were going to put one on, without a ruling?

4 MR. CHAN: Correct. If you wanted us to save jury  
5 day time.

6 THE COURT: Well, I'd like to save day time. I  
7 don't know what --

8 MR. KESSLER: I mean, there are certainly cases  
9 where the defendant sort of makes a pro forma motion to -- and  
10 then to be supplemented. But, frankly, I don't feel confident  
11 or competent to actually advise on what the state of the law  
12 is about what is waived or not waived about when a Rule 29  
13 motion is made.

14 THE COURT: I don't want to be wrong either and  
15 agree to something that might --

16 MR. CHAN: Okay, that's fine. I just didn't know if  
17 you wanted a particular --

18 THE COURT: Obviously, my desire is to move the case  
19 forward, but if it means that you may inadvertently waive,  
20 despite a ruling on my part --

21 MR. CHAN: Okay.

22 MR. KESSLER: And I think the defense would have to  
23 make a motion. The question is --

24 MR. CHAN: Save the argument.

25 MR. KESSLER: -- the argument.

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1 MR. CHAN: No, we'll just do the whole thing. We'll  
2 just do the whole thing after the government rests. And then  
3 the only --

4 THE COURT: How long will that take?

5 MR. CHAN: Well, I was going to argue it, if it was  
6 today. But Mr. Mastro is back tomorrow so he's going to argue  
7 it.

8 MR. KESSLER: He promised an hour. No more.

9 MR. PITLUCK: That was a careful nonanswer, Judge.

10 MR. CHAN: That's all I can say on that topic.

11 MR. KESSLER: So no one has a position on it.

12 MR. CHAN: But I think definitely not more than an  
13 hour. I think an uninterrupted 30 minutes sounds about right.

14 THE COURT: All right.

15 MR. CHAN: And the last thing that I wanted to say  
16 on the record was I want to apologize to Mr. Kessler for the  
17 outburst I had at sidebar.

18 THE COURT: We don't have to put this on the record.  
19 Please.

20 (WHEREUPON, discussion was had off the record.)

21 MS. RUBIN: Your Honor, to the extent that you  
22 wanted to talk about the ex parte submission we made last  
23 night at Your Honor's request, if Your Honor would like to do  
24 that in the morning instead so that Mr. Greebel can consult  
25 with counsel, I would be happy to do that, or at another time,

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1 and I would be happy to stay and have that conversation with  
2 Your Honor and your clerk.

3 THE COURT: I was just trying to understand, because  
4 I -- you are welcome to come up here and see what I've got.

5 MR. PITLUCK: Judge, we'll leave. I would just put  
6 on the record that one of them, as you're aware, I'm sure, one  
7 of the disclosures we're concerned about is for Professor  
8 Lewis, who is in their first five witnesses, who has also got  
9 some --

10 MS. RUBIN: You're elevating her professor status.  
11 I'm sure she'll take that?

12 MR. KESSLER: No, Professor Lewis is a professor.

13 MS. RUBIN: Oh, I'm sorry. Professor Lewis. I  
14 thought you meant Ms. Klein.

15 THE COURT: What do you want about Professor Lewis?  
16 You want more disclosure?

17 MR. PITLUCK: It is not necessarily -- we asked for  
18 the disclosure, so in the event the Court deems that it is  
19 not -- that it is 26.2 material, we'd obviously like it  
20 before, but we are now butting up to, you know, the day in  
21 which Professor Lewis would testify. So we do have relevance  
22 objections of certain opinions for Professor Lewis, and,  
23 obviously, if we are going to cross-examine him and the Court  
24 determines that that material should be disclosed to us, we  
25 would like to have it sooner rather than later, and I

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1 appreciate everything the Court is dealing with. I just  
2 wanted to --

3 THE COURT: All right. I will tell you what. This  
4 is just not even what you have given me in the last week on  
5 experts. And, you know, I was talking to my clerk about this  
6 last evening. I have read everything now three times because  
7 this has gone on for so long, the expert submission and the  
8 little dribbles of additional information, it is just taking  
9 me more time than I would like. We have got so many experts  
10 and so many problems.

11 MR. PITLUCK: I completely understand, Judge, and I  
12 didn't mean to imply that.

13 THE COURT: Mr. Greebel is not here, so I didn't  
14 want to get too far into the weeds. But I am just trying to  
15 explain why. It seems like I am taking a long time, but,  
16 honestly, you guys just made additional submissions over the  
17 weekend.

18 MR. PITLUCK: Judge, obviously, you and your clerk  
19 are doing a ton of work. I was just putting you on notice of  
20 where we are vis-a-vis timing.

21 THE COURT: Understood.

22 MR. PITLUCK: Thank you.

23 THE COURT: All right.

24 (WHEREUPON, at 6:40 p.m., the proceedings were  
25 adjourned until 9:00 a.m., December 6, 2017.)

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**'the [1]** 7919/5  
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**-- and [2]** 7753/11 7912/14  
**-- but [1]** 7899/3  
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7758/13  7758/15 7771/1 7771/20 7771/21 7771/22  7771/25 7772/8 7772/20 7773/1 7774/15  7774/19 7776/2 7776/6 7776/12 7776/16  7776/21 7777/14 7777/17 7777/18 7779/6  7780/13 7781/1 7781/22 7781/23 7782/13  7783/2 7784/14 7784/16 7784/22 7785/5  7785/6 7785/13 7787/22 7788/4 7789/1  7789/22 7790/22 7790/23 7791/1 7791/9  7791/10 7791/25 7791/25 7792/1 7792/2  7792/12 7793/8 7793/10 7795/11 7798/19  7798/22 7809/25 7902/7 7902/20 7902/22  7903/17 7904/3 7904/6 7904/9 7904/10  7904/13 7904/17 7904/19 7904/20 7905/11  7905/11 7906/23  <b>2014 [55]</b> 7688/6 7706/9 7707/19 7707/22  7708/5 7708/13 7721/14 7721/21 7722/4  7722/11 7722/19 7723/3 7723/9 7723/11  7723/20 7723/23 7724/8 7726/6 7731/20  7734/22 7736/22 7737/13 7737/18 7744/6  7744/8 7744/19 7744/20 7744/21 7744/21  7748/15 7748/17 7748/23 7749/2 7749/8  7749/18 7749/21 7750/2 7750/8 7750/9  7750/24 7751/13 7751/20 7752/23 7753/21  7754/5 7755/1 7755/7 7755/8 7756/6 7756/7  7757/9 7757/12 7796/15 7797/6 7797/20  <b>2015 [16]</b> 7799/8 7801/13 7801/17 7801/21  7804/13 7827/12 7840/8 7841/9 7841/19  7842/14 7843/21 7844/5 7845/10 7846/19  7847/8 7908/16  <b>2017 [2]</b> 7670/5 7972/25  <b>20th [1]</b> 7810/6  <b>22 [3]</b> 7902/19 7903/22 7904/11  <b>22.2 [1]</b> 7676/9  <b>2268 [1]</b> 7670/22  <b>24 [6]</b> 7706/8 7716/17 7718/17 7718/24  7733/14 7797/20  <b>245 [6]</b> 7788/24 7789/17 7790/12 7790/21  7790/22 7792/8  <b>246 [1]</b> 7717/2  <b>25 [7]</b> 7701/14 7701/21 7702/3 7702/7 7702/16  7703/8 7705/11  <b>25th [10]</b> 7671/13 7672/21 7677/14 7679/15  7685/8 7695/15 7697/9 7698/14 7699/2  7699/18  <b>26 [1]</b> 7706/4  <b>26.2 [1]</b> 7971/19  <b>265 [1]</b> 7790/15  <b>26A [2]</b> 7757/20 7758/5  <b>26th [2]</b> 7685/8 7685/8  <b>27 [2]</b> 7676/6 7771/20  <b>271 [1]</b> 7670/14  <b>28 [4]</b> 7758/17 7877/8 7884/10 7906/18  <b>286 [31]</b> 7707/13 7721/7 7723/17 7724/6  7724/7 7724/23 7728/8 7729/2 7729/16  7731/10 7746/1 7746/9 7746/9 7746/21 7747/2  7747/9 7747/18 7748/2 7748/9 7748/20 7749/6  7749/25 7750/8 7751/9 7751/19 7753/18  7754/25 7756/4 7796/19 7797/19 7797/21  <b>29 [11]</b> 7671/18 7672/18 7673/9 7702/7  7703/14 7798/19 7798/22 7928/6 7967/24  7968/19 7969/12  <b>293 [1]</b> 7866/16  <b>29A [3]</b> 7781/9 7781/15 7785/3  <b>29th [11]</b> 7673/13 7679/23 7680/15 7680/19  7685/6 7688/14 7692/23 7696/3 7696/9 7697/3  7697/6  <b>2:00 [1]</b> 7900/7  <b>2:13 [1]</b> 7827/2  <b>2:29 p.m [1]</b> 7776/9  <b>2:45 p.m [2]</b> 7785/13 7786/6  <b>2d [2]</b> 7872/10 7877/15  <b>2nd [1]</b> 7956/22</p>	<p>7967/23 7970/13  <b>3000 [1]</b> 7688/9  <b>302 [16]</b> 7801/6 7801/23 7802/19 7803/2  7803/7 7804/23 7807/12 7807/23 7808/7  7808/10 7811/8 7811/9 7811/15 7812/3  7824/25 7825/12  <b>302s [1]</b> 7811/24  <b>31 [10]</b> 7771/19 7771/20 7771/22 7771/25  7772/8 7772/20 7773/16 7777/14 7777/17  7795/11  <b>31,500 [1]</b> 7787/12  <b>334 [2]</b> 7872/10 7877/15  <b>3500 [1]</b> 7963/17  <b>378 [1]</b> 7872/10  <b>381 [1]</b> 7877/15  <b>3rd [1]</b> 7692/23</p> <hr/> <p><b>4</b></p> <p><b>4,167 [1]</b> 7679/23  <b>4/19/13 [1]</b> 7790/20  <b>40 [3]</b> 7740/10 7801/7 7899/13  <b>40,000 [1]</b> 7808/20  <b>401 [1]</b> 7680/6  <b>403 [5]</b> 7680/6 7685/10 7685/21 7685/22  7922/2  <b>45 [5]</b> 7747/7 7747/8 7747/12 7801/7 7801/7  <b>459 [30]</b> 7671/9 7671/12 7671/22 7671/25  7672/14 7672/16 7672/24 7673/4 7673/8  7673/18 7675/12 7678/16 7679/22 7680/14  7691/12 7692/2 7692/5 7695/8 7695/14  7695/14 7697/7 7698/18 7698/19 7698/24  7700/4 7701/9 7701/13 7702/21 7703/7  7705/10  <b>466 [2]</b> 7956/20 7956/21  <b>468-1 [1]</b> 7930/8  <b>48 [1]</b> 7682/7  <b>487 [10]</b> 7761/12 7761/13 7761/22 7763/22  7765/3 7766/11 7766/25 7769/2 7769/17  7771/3  <b>48th [1]</b> 7670/18  <b>4:31 [5]</b> 7771/22 7772/1 7772/8 7772/20  7777/17  <b>4:44 p.m [1]</b> 7786/6  <b>4:45 [1]</b> 7900/18  <b>4:55 [1]</b> 7901/1</p> <hr/> <p><b>5</b></p> <p><b>50 [1]</b> 7740/10  <b>50,000 [1]</b> 7808/20  <b>5054 [2]</b> 7822/20 7823/17  <b>506 [1]</b> 7906/9  <b>506A [2]</b> 7905/25 7906/10  <b>520 [1]</b> 7906/22  <b>560 [5]</b> 7784/11 7785/9 7785/21 7786/2 7787/5  <b>561 [2]</b> 7903/23 7903/24  <b>565 [6]</b> 7787/18 7790/3 7790/5 7790/7 7790/10  7790/21  <b>589 [3]</b> 7901/16 7901/20 7904/14  <b>5:06 [2]</b> 7767/21 7768/7  <b>5:27 [1]</b> 7917/23  <b>5:29 [1]</b> 7906/24  <b>5:30 [2]</b> 7860/22 7919/8  <b>5:30 p.m [1]</b> 7793/10  <b>5:42 p.m [1]</b> 7797/6  <b>5:43 [2]</b> 7762/17 7768/10  <b>5:57 [4]</b> 7762/9 7765/6 7769/3 7769/18  <b>5:58 [1]</b> 7762/14</p> <hr/> <p><b>6</b></p> <p><b>61 [28]</b> 7671/7 7671/18 7672/22 7672/25  7673/16 7674/7 7675/17 7677/6 7677/13  7680/17 7680/21 7691/10 7691/14 7694/12  7697/11 7697/23 7698/5 7698/6 7698/13  7699/5 7700/2 7700/11 7702/2 7702/8 7702/23  7702/25 7703/10 7704/1  <b>613 [1]</b> 7877/21  <b>653 [2]</b> 7798/16 7799/3  <b>662 [1]</b> 7862/13</p>
<p><b>2</b>  <b>2-7-13 [1]</b> 7758/20  <b>2.doc [1]</b> 7744/23  <b>20 [27]</b> 7682/10 7722/4 7722/19 7723/3  7744/21 7744/21 7749/7 7749/21 7751/13  7752/22 7753/21 7755/1 7755/7 7756/5 7756/7  7757/12 7757/16 7781/21 7781/23 7784/24  7785/6 7790/23 7791/8 7791/25 7791/25  7792/2 7808/5  <b>200 [1]</b> 7670/18  <b>2004 [1]</b> 7872/11  <b>2012 [30]</b> 7671/13 7672/21 7677/14 7679/23  7695/16 7696/3 7697/3 7698/14 7699/2  7699/18 7701/14 7701/21 7702/3 7702/7  7702/16 7705/11 7706/4 7761/14 7761/21  7762/17 7762/22 7765/6 7765/24 7767/21  7768/4 7803/15 7803/22 7803/25 7804/19  7906/18</p>	<p><b>3</b>  <b>3.3 [1]</b> 7704/12  <b>3/20 [1]</b> 7757/16  <b>30 [7]</b> 7782/12 7917/4 7917/6 7917/12 7917/13</p>	

<p><b>6</b>  <b>662-1990</b> [1] 7864/15  <b>664</b> [6] 7796/14 7796/22 7796/25 7797/5 7797/5 7797/16  <b>6650</b> [5] 7785/10 7785/11 7785/25 7786/13 7786/23  <b>674</b> [4] 7706/6 7707/14 7728/13 7729/16  <b>691</b> [1] 7866/5  <b>6978:3</b> [1] 7799/20  <b>6:30</b> [3] 7868/13 7928/25 7967/15  <b>6:40</b> [1] 7972/24  <b>6th</b> [2] 7946/23 7946/24</p>	<p><b>acquired</b> [8] 7815/4 7819/10 7819/11 7820/5 7820/6 7821/21 7822/5 7822/6  <b>act</b> [5] 7765/15 7771/6 7803/11 7878/6 7878/6  <b>acting</b> [9] 7670/13 7721/17 7721/24 7722/7 7722/15 7722/24 7728/11 7728/11 7749/23  <b>actions</b> [3] 7830/6 7837/21 7864/18  <b>active</b> [1] 7829/7  <b>activities</b> [3] 7792/3 7792/4 7792/6  <b>actual</b> [10] 7683/19 7683/20 7804/15 7823/13 7829/1 7830/10 7877/17 7877/24 7878/2 7941/16  <b>add</b> [6] 7702/9 7713/8 7787/13 7821/11 7826/14 7966/12  <b>added</b> [1] 7809/25  <b>adding</b> [1] 7947/6  <b>addition</b> [5] 7852/10 7921/22 7947/25 7948/15 7950/11  <b>additional</b> [8] 7705/21 7731/13 7782/17 7787/12 7882/5 7963/2 7972/8 7972/16  <b>additive</b> [1] 7774/5  <b>address</b> [14] 7673/24 7675/20 7686/19 7734/25 7826/17 7836/24 7837/1 7860/17 7872/25 7918/13 7919/3 7945/25 7946/6 7951/6  <b>addressed</b> [5] 7696/17 7825/25 7857/18 7878/20 7942/15  <b>addresses</b> [2] 7734/17 7935/18  <b>addressing</b> [1] 7733/10  <b>adhered</b> [1] 7943/20  <b>adjourn</b> [2] 7899/13 7900/18  <b>adjourned</b> [1] 7972/25  <b>adjusted</b> [1] 7787/11  <b>administer</b> [3] 7856/2 7873/5 7883/2  <b>administered</b> [5] 7882/10 7888/20 7893/9 7893/23 7894/14  <b>administration</b> [3] 7885/6 7885/12 7920/22  <b>admissibility</b> [8] 7681/11 7683/16 7688/2 7724/14 7754/21 7923/20 7924/21 7945/11  <b>admissible</b> [23] 7672/25 7673/18 7673/19 7682/16 7682/17 7684/6 7684/7 7685/25 7685/25 7688/3 7688/3 7688/4 7688/25 7692/4 7735/10 7824/20 7856/17 7877/23 7878/4 7882/2 7938/2 7943/9 7943/17  <b>admission</b> [6] 7676/3 7764/16 7764/17 7767/8 7868/25 7876/6  <b>admissions</b> [1] 7880/7  <b>admit</b> [24] 7694/11 7698/4 7731/17 7735/11 7735/13 7736/15 7736/16 7736/19 7740/10 7740/21 7743/14 7756/20 7767/9 7773/8 7780/3 7850/15 7864/3 7872/13 7872/14 7872/17 7877/24 7880/6 7881/11 7883/23  <b>admits</b> [2] 7800/21 7926/14  <b>admitted</b> [23] 7674/12 7674/15 7698/11 7714/19 7717/8 7730/2 7732/15 7733/7 7733/16 7733/17 7734/19 7734/21 7737/4 7738/7 7740/5 7743/22 7773/7 7780/5 7786/25 7803/17 7803/25 7868/21 7876/11  <b>admitting</b> [3] 7691/15 7877/2 7877/3  <b>admonish</b> [1] 7817/24  <b>admonishment</b> [1] 7837/17  <b>admonition</b> [2] 7817/11 7943/20  <b>adopt</b> [1] 7825/20  <b>adopted</b> [2] 7824/4 7867/18  <b>advance</b> [5] 7683/2 7687/4 7726/14 7927/25 7962/22  <b>adverse</b> [3] 7870/22 7872/2 7965/2  <b>advice</b> [9] 7672/23 7673/4 7677/2 7685/4 7685/7 7686/8 7688/14 7689/11 7689/18  <b>advise</b> [2] 7756/21 7969/11  <b>advised</b> [3] 7783/3 7783/6 7888/25  <b>adviser</b> [1] 7791/2  <b>advocacy</b> [1] 7849/14  <b>affect</b> [1] 7677/2  <b>affiliate</b> [2] 7765/14 7771/5  <b>affiliated</b> [1] 7783/3  <b>affiliation</b> [1] 7770/3  <b>affirmatively</b> [1] 7877/2  <b>affirmed</b> [1] 7962/9</p>	<p><b>afield</b> [4] 7729/10 7729/14 7736/21 7741/22  <b>afternoon</b> [2] 7860/23 7862/2  <b>afterwards</b> [4] 7831/20 7854/7 7891/9 7894/16  <b>AG</b> [1] 7926/20  <b>agenda</b> [3] 7758/12 7789/3 7793/9  <b>agent</b> [186] 7671/5 7673/7 7673/19 7674/3 7674/20 7674/24 7681/3 7681/9 7684/20 7684/22 7684/23 7684/23 7687/4 7687/15 7688/8 7688/15 7689/4 7689/6 7690/12 7690/22 7695/1 7695/11 7697/2 7698/16 7714/15 7726/4 7726/21 7726/24 7729/12 7730/5 7730/10 7730/14 7730/17 7731/16 7731/18 7731/18 7731/23 7732/12 7732/19 7733/5 7733/11 7734/1 7735/11 7735/13 7735/20 7736/5 7736/5 7736/8 7736/9 7736/16 7736/19 7736/24 7738/3 7738/22 7738/24 7739/24 7740/3 7742/3 7745/23 7752/17 7757/19 7759/21 7787/13 7794/15 7795/24 7796/4 7800/8 7802/20 7803/7 7803/8 7803/8 7804/12 7805/2 7811/11 7811/21 7811/25 7812/5 7824/5 7824/17 7826/7 7827/6 7827/11 7828/11 7830/12 7832/25 7833/4 7837/24 7838/3 7838/6 7838/7 7838/12 7840/6 7840/10 7841/1 7841/7 7841/17 7842/1 7842/12 7842/25 7843/10 7843/20 7844/5 7844/19 7845/5 7845/11 7845/25 7846/10 7846/12 7846/20 7849/24 7851/7 7852/18 7853/11 7856/7 7856/11 7856/12 7856/16 7856/21 7856/22 7857/9 7860/1 7863/11 7863/22 7874/3 7874/24 7875/7 7875/10 7875/15 7876/14 7879/10 7882/2 7882/8 7882/15 7882/22 7882/25 7884/14 7887/16 7887/24 7888/18 7889/9 7889/14 7889/16 7891/25 7892/1 7892/14 7893/9 7893/11 7893/17 7893/22 7893/25 7894/1 7894/24 7895/6 7896/23 7897/9 7897/10 7897/17 7898/17 7901/12 7901/15 7901/18 7902/2 7907/9 7908/8 7908/14 7910/4 7912/20 7912/24 7913/14 7915/20 7916/18 7918/1 7918/15 7920/5 7920/21 7921/8 7921/13 7925/1 7925/6 7925/15 7926/15 7927/6 7927/10 7927/11 7927/11 7927/12  <b>agent's</b> [13] 7794/9 7811/4 7811/15 7812/4 7829/11 7830/6 7833/9 7837/21 7846/25 7855/6 7891/11 7920/2 7921/10  <b>agents</b> [9] 7846/5 7846/21 7851/13 7854/9 7868/12 7874/18 7876/3 7894/20 7926/17  <b>aggregate</b> [1] 7788/15  <b>ago</b> [3] 7877/8 7946/22 7964/2  <b>agree</b> [64] 7673/25 7676/4 7688/5 7688/21 7701/6 7702/19 7703/18 7704/21 7711/22 7714/1 7716/3 7735/14 7747/5 7779/1 7784/22 7790/15 7800/10 7801/10 7801/12 7801/13 7802/22 7822/12 7824/14 7898/9 7898/12 7903/5 7904/9 7904/25 7907/3 7908/14 7908/19 7908/25 7909/6 7914/25 7930/2 7930/18 7931/2 7933/11 7933/15 7933/20 7933/25 7934/2 7934/8 7935/14 7935/22 7939/2 7940/23 7942/25 7944/18 7944/21 7944/22 7945/13 7945/17 7948/3 7949/17 7950/18 7955/8 7958/20 7959/6 7959/8 7960/18 7963/25 7964/15 7969/15  <b>agreed</b> [38] 7676/14 7676/17 7688/24 7689/1 7774/10 7783/10 7825/18 7835/1 7859/2 7872/7 7879/3 7879/21 7903/10 7905/2 7922/19 7923/1 7930/16 7932/13 7932/22 7933/7 7934/9 7935/20 7936/18 7937/20 7940/25 7943/1 7945/2 7947/21 7948/3 7949/19 7949/24 7950/8 7951/1 7952/7 7952/15 7952/17 7955/10 7963/22  <b>agreeing</b> [4] 7852/13 7958/7 7958/9 7962/14  <b>agreement</b> [79] 7671/14 7671/16 7671/23 7672/14 7672/17 7675/4 7678/16 7679/17 7679/17 7692/6 7692/12 7695/17 7695/20 7701/15 7782/1 7784/19 7787/9 7787/11 7788/7 7789/6 7789/20 7789/21 7790/4 7790/8 7790/12 7791/9 7792/5 7792/14 7797/13 7803/20 7805/23 7805/23 7807/8 7809/16</p>
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<p><b>A</b>  <b>agreement...</b> [45] 7809/18 7809/22 7826/16 7902/4 7902/9 7902/12 7903/18 7904/1 7904/5 7904/17 7904/22 7930/4 7930/7 7932/11 7933/5 7934/4 7936/16 7936/21 7937/16 7937/16 7937/22 7938/14 7938/15 7940/6 7940/17 7941/7 7941/12 7942/23 7943/7 7943/12 7946/11 7950/15 7951/15 7957/7 7957/21 7957/25 7958/17 7958/20 7959/21 7960/5 7960/8 7960/13 7961/2 7962/19 7962/21  <b>agreements</b> [24] 7675/14 7782/15 7782/18 7783/9 7826/17 7850/13 7850/14 7938/10 7938/17 7941/11 7947/12 7947/13 7947/14 7947/20 7956/14 7956/16 7956/24 7957/5 7958/12 7958/13 7960/9 7960/10 7961/8 7961/8  <b>agrees</b> [4] 7867/23 7877/9 7930/14 7930/17  <b>aha</b> [1] 7807/19  <b>ahead</b> [5] 7680/23 7854/25 7860/10 7910/2 7927/23  <b>aided</b> [1] 7670/24  <b>aiding</b> [1] 7954/22  <b>AI</b> [6] 7784/14 7784/18 7786/3 7789/6 7790/13 7794/5  <b>Alan</b> [1] 7785/13  <b>albeit</b> [1] 7735/2  <b>album</b> [2] 7813/21 7816/4  <b>ALIXANDRA</b> [1] 7670/15  <b>allegations</b> [1] 7869/8  <b>allege</b> 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<p><b>A</b></p> <p><b>assistance</b> [1] 7870/8</p> <p><b>Assistant</b> [1] 7670/16</p> <p><b>associate</b> [7] 7699/7 7728/4 7729/19 7734/9 7735/2 7735/23 7736/1</p> <p><b>associated</b> [1] 7787/14</p> <p><b>associates</b> [2] 7847/12 7959/20</p> <p><b>assume</b> [8] 7707/25 7732/11 7745/16 7745/19 7871/4 7871/5 7893/22 7928/5</p> <p><b>assuming</b> [3] 7726/16 7745/18 7859/7</p> <p><b>attached</b> [16] 7705/1 7728/8 7744/25 7750/24 7750/25 7751/1 7755/5 7755/8 7756/11 7757/15 7768/15 7788/12 7789/5 7789/12 7828/17 7902/11</p> <p><b>attaches</b> [4] 7708/3 7708/4 7718/21 7718/24</p> <p><b>attaching</b> [3] 7716/20 7809/24 7904/21</p> <p><b>attachment</b> [11] 7708/4 7723/22 7724/19 7749/19 7754/7 7754/8 7789/13 7790/3 7790/7 7790/11 7904/24</p> <p><b>attachments</b> [3] 7744/19 7782/3 7789/3</p> <p><b>attack</b> [1] 7803/11</p> <p><b>attempt</b> [12] 7738/21 7802/18 7827/12 7840/7 7840/11 7841/2 7841/18 7842/12 7843/1 7843/11 7843/21 7845/11</p> <p><b>attempting</b> [2] 7681/2 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7939/2 7950/22 7954/14 7954/15 7954/21 7954/25 7955/3 7961/25 7965/16 7965/23 7966/5 7966/23 7967/8 7968/4 7971/8</p> <p><b>firsthand</b> [5] 7856/8 7856/9 7892/13 7893/6 7894/9</p> <p><b>fit</b> [1] 7685/21</p> <p><b>fits</b> [1] 7871/2</p> <p><b>five</b> [29] 7674/4 7685/7 7730/3 7738/18 7753/7 7753/8 7753/9 7753/12 7758/14 7812/15 7812/17 7812/18 7822/24 7886/23 7887/11 7887/12 7894/6 7928/14 7928/21 7929/22 7934/9 7965/16 7965/20 7965/23 7966/5 7966/6 7966/12 7966/23 7971/8</p> <p><b>fix</b> [1] 7903/6</p> <p><b>flat</b> [1] 7966/19</p> <p><b>flee</b> [1] 7910/19</p> <p><b>Fleeing</b> [1] 7910/20</p> <p><b>flight</b> [3] 7912/8 7912/22 7913/8</p> <p><b>flip</b> [1] 7940/15</p> <p><b>flipped</b> [1] 7747/21</p> <p><b>Floor</b> [1] 7670/18</p> <p><b>flow</b> [1] 7855/22</p> <p><b>focus</b> [2] 7710/13 7718/6</p> <p><b>focused</b> [3] 7816/4 7824/7 7898/14</p> <p><b>focusing</b> [1] 7824/8</p> <p><b>folks</b> [3] 7678/25 7862/11 7948/24</p> <p><b>follow</b> [6] 7717/13 7717/14 7717/24 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<p><b>frame</b> [1] 7920/24</p> <p><b>framed</b> [2] 7779/10 7919/19</p> <p><b>frankly</b> [11] 7821/2 7838/10 7853/1 7853/21 7926/5 7936/12 7944/16 7954/18 7960/2 7962/19 7969/10</p> <p><b>fraud</b> [11] 7828/8 7828/16 7828/25 7829/8 7829/19 7829/22 7830/23 7831/19 7851/3 7852/2 7853/9</p> <p><b>free</b> [2] 7957/1 7958/25</p> <p><b>frenzied</b> [1] 7868/15</p> <p><b>Friday</b> [4] 7744/6 7900/7 7900/19 7966/2</p> <p><b>friendly</b> [2] 7927/6 7957/2</p> <p><b>friends</b> [1] 7927/5</p> <p><b>front</b> [24] 7697/11 7705/3 7705/4 7705/5 7723/14 7755/19 7755/20 7834/17 7834/21 7834/22 7834/23 7851/13 7857/24 7868/17 7884/25 7885/17 7891/17 7891/23 7894/19 7898/18 7917/5 7917/13 7929/6 7958/8</p> <p><b>fronted</b> [1] 7919/17</p> <p><b>fruitful</b> [1] 7927/3</p> <p><b>fruition</b> [1] 7820/21</p> <p><b>frustrates</b> [1] 7903/9</p> <p><b>full</b> [11] 7693/22 7698/21 7698/22 7783/11 7796/17 7866/5 7931/11 7932/3 7932/6 7934/17 7945/24</p> <p><b>fuller</b> [1] 7734/8</p> <p><b>fully</b> 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7707/23 7708/4 7708/11 7708/14 7710/17 7710/18 7710/19 7710/22 7710/25 7712/23 7714/11 7715/15 7716/5 7716/15 7716/18 7716/21 7718/17 7718/21 7718/24 7721/12 7721/20 7722/2 7722/10 7722/17 7723/1 7723/18 7726/4 7726/5 7726/8 7727/6 7727/19 7728/6 7728/7 7728/7 7728/24 7729/1 7729/6 7730/6 7730/9 7730/13 7731/11 7731/25 7732/1 7732/9 7733/8 7733/13 7733/13 7734/3 7734/5 7734/7 7734/9 7734/14 7734/22 7734/24 7735/2 7735/3 7736/6 7736/23 7737/10 7737/12 7737/13 7737/15 7737/17 7738/7 7738/10 7738/12 7738/25 7739/8 7739/9 7739/14 7739/15 7740/1 7741/15 7741/16 7741/21 7741/24 7744/17 7745/1 7748/16 7748/21 7749/6 7749/21 7750/1 7750/7 7750/19 7750/24 7750/25 7751/10 7752/20 7753/19 7755/1 7755/7 7756/5 7756/6 7757/13 7757/16 7758/12 7758/21 7759/23 7766/12 7767/1 7808/5 7834/4 7845/23 7886/23 7887/11 7899/13 7917/5 7917/7 7917/12 7917/13 7967/23 7970/13  <b>minutes.doc</b> [3] 7744/20 7744/20 7744/21  <b>Miranda</b> [43] 7863/8 7863/17 7863/20 7864/6 7873/2 7873/6 7875/10 7875/21 7875/22 7876/2 7876/6 7877/10 7878/16 7878/22 7879/3 7879/9 7879/16 7879/16 7880/1 7881/7 7881/12 7881/18 7882/9 7883/10 7883/10 7885/6 7885/12 7885/12 7885/13 7885/22 7886/1 7888/20 7888/25 7889/25 7891/13 7892/11 7892/18 7893/8 7893/9 7893/12 7920/22 7922/21 7927/10  <b>misapplication</b> [1] 7831/8  <b>mislead</b> [2] 7924/9 7931/12  <b>misleading</b> [5] 7686/11 7686/12 7686/15 7739/12 7828/18  <b>miss</b> [1] 7906/20  <b>missing</b> [4] 7686/14 7734/12 7957/15 7957/17  <b>mission</b> [1] 7942/22  <b>misstates</b> [1] 7770/15  <b>mistake</b> [1] 7870/10  <b>mistaken</b> [2] 7817/10 7831/1  <b>misunderstanding</b> [1] 7831/8  <b>mixed</b> [1] 7748/19</p>	<p><b>model</b> [1] 7798/13  <b>moment</b> [2] 7716/7 7872/6  <b>Monday</b> [1] 7793/9  <b>monetary</b> [3] 7940/21 7940/22 7941/2  <b>money</b> [8] 7672/4 7678/5 7704/8 7788/15 7808/15 7820/16 7943/15 7959/3  <b>month</b> [3] 7708/14 7740/1 7740/24  <b>months</b> [21] 7726/14 7726/22 7729/3 7729/4 7729/25 7730/3 7730/7 7732/23 7738/5 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Aselage's</b> [2] 7737/4 7810/10  <b>Mr. Bertolini</b> [4] 7678/5 7678/18 7685/13 7701/7  <b>Mr. Biestek</b> [5] 7673/11 7673/11 7763/23 7765/5 7769/3  <b>Mr. Braconi</b> [1] 7889/15  <b>Mr. Brafman</b> [2] 7685/17 7685/17  <b>Mr. Brodsky</b> [56] 7674/4 7681/7 7681/12 7681/18 7686/25 7694/17 7695/2 7696/22 7713/13 7713/23 7715/16 7717/12 7718/3 7729/22 7738/20 7752/13 7766/21 7770/17 7776/15 7795/6 7804/18 7805/9 7805/20 7807/10 7819/23 7825/6 7827/7 7832/12 7835/9 7838/20 7853/18 7854/15 7857/7 7859/25 7860/6 7860/16 7864/13 7884/19 7886/13 7886/22 7887/10 7887/17 7893/14 7895/4 7896/4 7901/7 7901/24 7906/8 7906/13 7910/1 7919/21 7920/2 7928/4 7964/1 7965/14 7967/23  <b>Mr. Brodsky's</b> [3] 7681/4 7875/14 7877/1  <b>Mr. Carter</b> [19] 7695/9 7695/9 7695/25 7696/1 7697/13 7698/21 7723/13 7746/18 7747/1 7748/8 7749/11 7757/4 7765/4 7767/12 7769/1 7777/13 7789/16 7790/2 7790/6  <b>Mr. Chan</b> [8] 7826/2 7849/19 7929/10 7937/11 7946/20 7950/19 7951/10 7954/19  <b>Mr. Chan's</b> [1] 7954/17  <b>Mr. Cooley</b> [1] 7736/18  <b>Mr. Delzotto</b> [9] 7700/10 7791/23 7804/13 7874/20 7875/6 7883/5 7883/7 7891/23 7923/16  <b>Mr. Delzotto's</b> [1] 7823/24  <b>Mr. Dubin</b> [9] 7693/4 7693/5 7693/23 7812/19 7813/9 7814/13 7814/16 7849/11 7920/16  <b>Mr. Evan</b> [1] 7785/14  <b>Mr. Ferruolo</b> [3] 7826/12 7826/13 7959/22  <b>Mr. Ferruolo's</b> [1] 7727/22  <b>Mr. Geller</b> [5] 7784/6 7785/18 7787/5 7787/10 7936/17  <b>Mr. Geller's</b> [1] 7936/16</p>
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7833/2 7833/10 7835/9 7835/20 7836/16 7836/25 7837/22 7839/4 7840/7 7840/12 7841/3 7841/8 7841/19 7842/14 7843/1 7843/2 7843/3 7843/11 7843/13 7843/21 7844/4 7845/6 7845/10 7846/19 7847/8 7847/11 7847/18 7850/5 7852/3 7852/24 7853/3 7853/5 7853/14 7853/24 7854/3 7854/4 7854/19 7855/9 7856/8 7856/10 7857/2 7859/6 7860/7 7865/10 7867/3 7870/6 7870/17 7870/23 7871/1 7871/5 7871/9 7871/24 7872/2 7873/2 7874/4 7874/12 7874/25 7874/25 7875/3 7881/12 7881/13 7882/10 7883/9 7885/8 7888/3 7888/10 7888/12 7888/15 7888/19 7888/24 7889/17 7890/4 7890/15 7891/13 7892/11 7895/10 7896/8 7897/9 7897/16 7897/21 7902/7 7902/20 7902/24 7903/17 7903/25 7904/16 7904/21 7905/12 7905/21 7905/21 7906/17 7906/19 7906/24 7907/4 7907/10 7907/24 7908/15 7908/20 7908/23 7909/1 7909/7 7909/9 7909/13 7909/16 7910/5 7910/18 7910/19 7910/24 7910/25 7911/1 7911/9 7912/4 7913/19 7913/20 7914/4 7914/21 7915/21 7916/2 7916/11 7916/14 7916/19 7916/25 7918/19 7919/13 7919/22 7920/22 7923/18 7923/23 7924/14 7924/25 7925/4 7925/18 7926/4 7926/13 7927/8 7927/10 7954/4 7954/8 7958/24 7967/17 7967/18 7968/5 7968/9 7970/24 7972/13</p> <p><b>Mr. Greebel's [38]</b> 7673/17 7675/22 7676/19 7677/1 7680/3 7686/1 7686/4 7686/21 7688/14 7691/8 7691/20 7705/11 7715/4 7716/20 7732/1 7734/9 7735/2 7736/1 7736/3 7761/21 7765/5 7769/3 7769/17 7777/25 7785/4 7797/12 7819/23 7829/2 7835/12 7842/13 7872/18 7875/8 7879/2 7883/4 7887/24 7889/4 7908/16 7923/3</p> <p><b>Mr. Hackert [4]</b> 7758/10 7781/24 7784/25 7785/7</p> <p><b>Mr. Jackson [1]</b> 7697/8</p> <p><b>Mr. Jaclin [5]</b> 7765/24 7766/3 7766/23 7768/4 7768/12</p> <p><b>Mr. Jain [5]</b> 7710/3 7758/9 7781/24 7784/25 7785/6</p> <p><b>Mr. Johnson [2]</b> 7966/20 7966/21</p> <p><b>Mr. Kessler [3]</b> 7929/13 7963/15 7970/16</p> <p><b>Mr. Kessler's [2]</b> 7940/15 7958/24</p> <p><b>Mr. Koestler [5]</b> 7678/6 7678/19 7683/5 7683/6 7701/7</p> <p><b>Mr. Kravitz [14]</b> 7726/8 7727/4 7728/4 7730/18 7732/6 7732/8 7735/25 7736/1 7736/14 7736/18 7744/25 7748/16 7749/18 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7671/19 7671/21 7671/25 7672/17 7672/23 7673/12 7675/13 7677/6 7678/15 7678/17 7679/3 7679/23 7681/20 7685/15 7685/15 7685/18 7691/13 7691/16 7692/6 7692/19 7693/1 7695/15 7695/19 7699/1 7699/6 7699/17 7700/2 7701/7 7701/8 7701/13 7701/18 7701/22 7702/3 7702/6 7702/21 7703/8 7703/23 7704/1 7704/3 7705/12 7706/3 7706/9 7718/1 7718/4 7733/6 7734/4 7737/5 7740/20 7761/14 7761/22 7772/23 7773/14 7774/14 7774/19 7774/22 7775/5 7776/3 7777/6 7777/17 7778/4 7780/14 7780/22 7785/4 7785/13 7785/18 7786/3 7786/11 7787/4 7787/5 7787/20 7788/10 7792/13 7797/1 7798/2 7798/8 7798/11 7798/22 7798/25 7799/5 7803/20 7803/21 7804/20 7813/7 7813/20 7814/24 7815/20 7818/12 7819/9 7819/15 7820/3 7820/16 7820/25 7822/14 7828/18 7831/25 7851/10 7853/9 7855/11 7865/11 7874/21 7874/22 7874/23 7889/12 7902/19 7902/21 7902/24 7903/15 7903/19 7904/16 7904/21 7905/12 7905/20 7906/17 7906/24 7907/4 7907/10 7907/11 7907/25 7954/3 7958/23 7961/18</p> <p><b>Mr. Shkreli's [8]</b> 7675/5 7683/23 7685/12 7700/3 7887/25 7888/1 7953/1 7959/20</p> <p><b>Mr. Su [20]</b> 7696/3 7696/9 7697/3 7804/20 7807/9 7808/9 7810/3 7810/12 7811/5 7811/6 7811/17 7812/1 7812/3 7812/10 7823/24 7824/25 7825/9 7825/12 7825/19 7830/4</p> <p><b>Mr. Su's [6]</b> 7807/17 7808/7 7810/17 7811/8 7811/13 7822/21</p> <p><b>Mr. Sullivan [3]</b> 7763/23 7765/6 7769/4</p> <p><b>Mr. Mariotta's [1]</b> 7865/22</p> <p><b>Ms. [28]</b> 7678/6 7683/8 7685/13 7686/20 7696/4 7696/10 7697/4 7701/8 7707/19 7712/21 7716/18 7726/7 7727/3 7727/7 7737/24 7739/14 7739/18 7741/11 7810/2 7810/7 7858/22 7906/2 7923/19 7924/17 7925/23 7929/2 7966/21 7971/14</p> <p><b>Ms. Chew [3]</b> 7696/4 7696/10 7697/4</p> <p><b>Ms. Hassan [5]</b> 7678/6 7683/8 7685/13 7686/20 7701/8</p> <p><b>Ms. Jensen [3]</b> 7716/18 7726/7 7741/11</p> <p><b>Ms. Klein [2]</b> 7966/21 7971/14</p> <p><b>Ms. Rubin [3]</b> 7858/22 7906/2 7929/2</p> <p><b>Ms. Smith [4]</b> 7712/21 7810/2 7923/19 7924/17</p> <p><b>Ms. Smith's [2]</b> 7810/7 7925/23</p> <p><b>Ms. Valeur-Jensen [5]</b> 7707/19 7727/3 7737/24 7739/14 7739/18</p> <p><b>Ms. Valeur-Jensen's [1]</b> 7727/7</p> <p><b>MSMB [19]</b> 7759/15 7773/20 7774/5 7774/8 7774/9 7774/10 7782/9 7782/10 7782/19 7783/3 7783/3 7783/7 7783/9 7783/11 7783/13 7803/19 7850/12 7850/13 7905/1</p>	<p><b>msmbcapital.com [1]</b> 7762/23</p> <p><b>Muchnik [27]</b> 7840/7 7841/2 7841/6 7841/18 7842/13 7843/12 7843/23 7844/6 7844/11 7845/8 7845/12 7846/6 7846/22 7847/2 7847/7 7847/13 7850/2 7908/16 7908/21 7909/2 7909/10 7909/13 7910/6 7914/16 7916/14 7916/24 7926/4</p> <p><b>multi [2]</b> 7910/8 7910/9</p> <p><b>multi-national [1]</b> 7910/9</p> <p><b>multiple [18]</b> 7676/21 7689/16 7692/14 7692/15 7692/22 7693/1 7697/16 7732/21 7829/3 7829/4 7850/10 7850/14 7853/13 7868/11 7897/18 7907/24 7915/7 7921/21</p> <p><b>must [10]</b> 7862/18 7862/18 7876/25 7880/1 7880/2 7880/2 7880/11 7880/11 7961/8 7967/14</p> <p><b>MYLAN [1]</b> 7670/20</p> <p><b>N</b></p> <p><b>name [3]</b> 7721/23 7722/7 7759/15</p> <p><b>named [1]</b> 7769/10</p> 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[39]</b> 7681/24 7682/1 7683/6 7684/5 7733/15 7742/4 7786/10 7794/10 7799/8 7801/21 7802/19 7803/2 7804/8 7804/13 7804/25 7805/6 7805/7 7805/12 7805/14 7805/22 7807/20 7807/21 7812/4 7823/25 7824/3 7825/9 7841/7 7845/7 7845/11 7846/20 7847/6 7854/14 7858/22 7869/10 7879/13 7916/2 7916/6 7916/10 7920/14</p> <p><b>new [25]</b> 7670/1 7670/4 7670/13 7670/14 7670/18 7670/18 7672/3 7672/3 7678/4 7678/13 7704/8 7704/8 7704/11 7704/19 7793/10 7839/6 7847/2 7916/2 7916/6 7916/8 7916/12 7916/12 7918/8 7956/14 7962/8</p> <p><b>news [1]</b> 7818/24</p> <p><b>next [39]</b> 7682/7 7684/1 7698/18 7701/18 7704/17 7707/25 7708/25 7720/4 7722/2 7722/10 7722/17 7722/23 7723/1 7725/5 7770/8 7770/15 7775/8 7776/8 7776/8 7778/19 7782/22 7808/5 7827/2 7827/19 7840/1 7840/19 7848/3 7861/5 7895/18 7915/23 7917/12 7931/1 7933/12 7935/13 7935/19 7944/24 7959/23 7966/2 7966/10</p> <p><b>nice [1]</b> 7814/13</p> <p><b>nicely [1]</b> 7780/21</p> <p><b>night [8]</b> 7689/21 7690/17 7740/11 7918/8 7928/19 7933/4 7933/7 7970/23</p> <p><b>nil [12]</b> 7911/15 7914/13 7918/20 7918/24 7920/12 7921/6 7921/23 7923/18 7923/24 7924/15 7925/7 7925/16</p> <p><b>nil' [1]</b> 7919/5</p> <p><b>nine [7]</b> 7677/8 7787/19 7793/12 7794/4 7794/5 7851/13 7952/6</p>
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<p><b>N</b>  <b>nobody</b> [8] 7737/1 7738/6 7814/2 7814/4 7814/7 7817/22 7818/20 7879/19  <b>nominating</b> [4] 7722/18 7744/22 7751/11 7752/21  <b>non</b> [2] 7737/6 7950/21  <b>non-highlighted</b> [1] 7950/21  <b>non-responses</b> [1] 7737/6  <b>nonagreed</b> [1] 7903/8  <b>nonanswer</b> [1] 7970/9  <b>none</b> [6] 7813/19 7817/7 7822/1 7931/23 7962/15 7966/22  <b>nonetheless</b> [1] 7873/3  <b>nonsensical</b> [1] 7964/2  <b>nonviolent</b> [5] 7912/8 7912/21 7913/7 7915/1 7915/9  <b>noon</b> [2] 7775/2 7778/1  <b>normal</b> [1] 7727/11  <b>Northern</b> [1] 7946/3  <b>note</b> [6] 7696/20 7753/14 7756/17 7786/22 7877/12 7967/8  <b>noted</b> [1] 7966/23  <b>notes</b> [11] 7799/4 7799/16 7799/20 7800/4 7800/5 7800/7 7800/10 7800/17 7800/19 7800/22 7801/4  <b>nothing</b> [17] 7706/23 7736/9 7778/17 7778/18 7830/24 7851/18 7852/5 7863/21 7868/20 7868/20 7871/23 7878/11 7895/15 7919/16 7921/6 7953/20 7962/18  <b>notice</b> [3] 7942/7 7966/7 7972/19  <b>noticed</b> [1] 7898/3  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7779/4 7783/4 7789/3 7793/12 7801/11 7801/19 7802/13 7804/6 7820/11 7821/4 7852/19 7856/20 7859/4 7859/4 7863/10 7878/18 7900/6 7903/19 7927/5 7930/8 7930/22 7952/6 7956/21 7959/15 7967/21  <b>numbered</b> [1] 7724/20  <b>numbers</b> [6] 7746/1 7746/5 7746/6 7746/7 7788/8 7795/17  <b>numeral</b> [1] 7935/5  <b>numerous</b> [3] 7686/6 7736/2 7857/19</p>	<p><b>objecting</b> [5] 7723/25 7764/1 7794/7 7842/6 7868/15  <b>objection</b> [93] 7684/10 7694/4 7694/9 7694/14 7700/14 7700/18 7700/22 7703/1 7707/10 7708/18 7708/23 7712/17 7712/18 7730/2 7731/13 7731/16 7736/14 7745/17 7747/14 7751/6 7751/22 7752/10 7754/13 7755/9 7755/22 7759/9 7760/18 7760/21 7761/2 7764/18 7766/19 7773/6 7778/6 7778/7 7779/9 7780/1 7789/8 7795/19 7795/23 7799/11 7799/14 7800/13 7800/23 7800/24 7827/14 7827/15 7838/22 7840/13 7840/14 7840/17 7841/4 7841/20 7842/5 7842/10 7842/15 7843/4 7843/14 7843/24 7843/25 7844/7 7844/10 7845/13 7845/16 7846/7 7846/14 7846/23 7846/24 7847/20 7847/23 7852/15 7888/14 7898/21 7899/8 7907/13 7908/2 7908/5 7909/21 7912/12 7912/16 7912/18 7913/11 7913/22 7913/24 7913/25 7914/18 7915/17 7916/16 7927/19 7935/6 7935/10 7936/15 7952/10 7953/6  <b>objectionable</b> [1] 7927/19  <b>objections</b> [10] 7676/21 7691/25 7694/8 7756/21 7783/7 7837/9 7852/23 7854/17 7956/5 7971/22  <b>obligation</b> [2] 7800/7 7824/23  <b>obligations</b> [3] 7782/16 7782/18 7967/10  <b>observations</b> [3] 7846/10 7846/25 7847/5  <b>observe</b> [15] 7845/18 7845/19 7845/19 7883/1 7885/5 7885/7 7885/7 7886/17 7888/19 7888/22 7890/5 7891/12 7891/13 7892/13 7893/5  <b>observed</b> [10] 7845/11 7845/17 7846/12 7846/20 7847/6 7883/10 7886/7 7889/14 7889/15 7889/24  <b>observing</b> [1] 7891/24  <b>obtain</b> [10] 7831/16 7844/5 7845/11 7849/25 7856/14 7873/5 7883/2 7899/23 7915/2 7915/6  <b>obtained</b> [4] 7834/18 7837/20 7844/16 7845/7  <b>obvious</b> [3] 7712/18 7718/20 7819/25  <b>obviously</b> [27] 7673/22 7683/1 7683/11 7685/16 7687/14 7694/3 7715/17 7731/12 7745/10 7794/1 7808/7 7809/20 7828/8 7831/15 7832/10 7832/14 7863/22 7879/23 7889/19 7900/10 7900/20 7928/5 7957/17 7969/18 7971/19 7971/23 7972/18  <b>occasions</b> [1] 7850/10  <b>occur</b> [2] 7685/1 7961/8  <b>occurred</b> [4] 7804/2 7804/25 7808/21 7811/1  <b>occurrence</b> [1] 7876/5  <b>occurring</b> [1] 7805/22  <b>occurs</b> [1] 7818/2  <b>October</b> [4] 7810/3 7810/9 7946/23 7946/24  <b>October 6th</b> [2] 7946/23 7946/24  <b>odds</b> [3] 7911/14 7914/12 7914/17  <b>offense</b> [2] 7912/21 7913/7  <b>offer</b> [22] 7672/25 7685/13 7689/14 7689/19 7691/9 7691/10 7698/3 7743/10 7756/13 7756/14 7764/15 7773/3 7779/23 7786/14 7863/2 7866/6 7875/21 7879/14 7937/3 7959/13 7967/3 7967/11  <b>offered</b> [16] 7674/2 7674/16 7674/25 7675/7 7681/19 7681/19 7682/22 7698/14 7715/1 7715/16 7729/24 7756/23 7774/13 7865/16 7884/17 7919/15  <b>offering</b> [13] 7673/1 7673/3 7680/8 7680/9 7685/11 7727/23 7729/8 7756/18 7756/19 7764/20 7883/19 7892/13 7892/15  <b>offerings</b> [1] 7961/11  <b>office</b> [8] 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7789/25 7790/9 7790/17 7790/18 7792/1 7794/21 7796/10 7797/19 7798/18 7801/14 7804/23 7805/14 7807/8 7807/9 7815/11 7817/7 7817/18 7818/23 7819/5 7819/5 7822/7 7834/8 7837/6 7841/24 7846/1 7846/2 7846/4 7846/20 7851/14 7852/20 7859/4 7859/20 7863/10 7864/8 7864/10 7867/10 7870/9 7872/3 7874/7 7877/5 7879/15 7893/10 7893/13 7895/14 7899/9 7903/14 7903/16 7903/18 7905/3 7905/4 7905/14 7905/15 7905/15 7905/17 7906/1 7906/9 7907/18 7909/16 7911/13 7914/12 7918/18 7927/24 7931/2 7935/22 7936/13 7938/8 7938/10 7938/20 7940/18 7941/11 7942/1 7943/2 7946/12 7947/1 7948/5 7949/19 7949/25 7951/13 7951/17 7952/10 7954/9 7955/20 7959/4 7959/9 7960/4 7960/16 7960/21 7961/23 7962/1 7962/25 7967/6 7967/11 7969/3 7970/11 7971/6 7971/6  <b>one's</b> [5] 7749/16 7753/14 7756/10 7869/22 7960/10  <b>ones</b> [6] 7717/14 7729/2 7742/13 7755/8 7966/10 7966/11  <b>open</b> [24] 7671/1 7687/25 7692/11 7721/1 7731/3 7731/6 7802/5 7822/10 7823/1 7828/2 7828/24 7832/5 7833/19 7840/2 7849/3 7857/12 7857/20 7862/9 7866/12 7889/5 7889/15 7896/1 7918/16 7960/1  <b>opened</b> [2] 7857/6 7919/17  <b>opening</b> [6] 7832/7 7837/23 7838/1 7853/24 7957/19 7958/1  <b>operates</b> [1] 7926/19  <b>operating</b> [5] 7728/15 7728/17 7874/15 7875/6 7962/14  <b>operative</b> [4] 7931/24 7936/23 7937/8 7942/5  <b>opinion</b> [26] 7727/21 7727/22 7768/1 7768/16 7768/19 7768/21 7768/22 7768/22 7768/25 7820/12 7821/8 7863/7 7956/14 7956/17 7956/23 7956/25 7957/6 7958/1 7960/4 7961/4 7961/5 7961/6 7962/17 7964/8 7964/13 7964/13  <b>opinions</b> [3] 7964/6 7966/18 7971/22  <b>opportunity</b> [9] 7711/18 7792/22 7792/24 7803/3 7803/6 7812/5 7825/1 7825/19 7868/7  <b>opposed</b> [3] 7816/7 7822/6 7896/8  <b>opposite</b> [1] 7804/15  <b>option</b> [5] 7774/8 7774/8 7916/20 7916/22 7916/23  <b>oral</b> [5] 7787/11 7873/2 7881/12 7882/14 7946/6  <b>orally</b> [6] 7867/7 7883/11 7885/6 7888/20 7894/2 7894/14  <b>orange</b> [11] 7930/9 7930/13 7930/15 7932/7 7933/12 7933/20 7934/10 7934/24 7949/17 7949/20 7950/9  <b>oranges</b> [1] 7811/10  <b>order</b> [18] 7679/7 7679/12 7681/22 7746/8 7829/18 7830/13 7830/18 7830/22 7831/3 7831/7 7850/19 7903/22 7915/6 7928/21 7928/22 7958/6 7958/14 7966/14  <b>ordered</b> [1] 7967/21  <b>orderly</b> [1] 7957/3</p>
<p><b>O</b>  <b>oath</b> [6] 7695/1 7822/9 7827/6 7845/24 7887/19 7930/21  <b>object</b> [17] 7694/6 7696/14 7708/24 7724/12 7725/2 7756/16 7770/14 7776/14 7786/15 7786/20 7795/18 7832/10 7842/3 7863/22 7881/23 7898/23 7927/24  <b>objected</b> [9] 7711/11 7712/20 7728/14 7783/4 7876/6 7885/18 7935/11 7941/5 7956/13</p>		



<p><b>organization</b> [1] 7932/25</p> <p><b>original</b> [1] 7903/15</p> <p><b>originally</b> [2] 7941/5 7953/3</p> <p><b>otherwise</b> [3] 7749/16 7858/8 7968/14</p> <p><b>ourselves</b> [3] 7721/12 7914/25 7915/12</p> <p><b>outburst</b> [1] 7970/17</p> <p><b>outside</b> [10] 7728/11 7803/18 7862/9 7868/14 7869/5 7886/3 7886/14 7887/21 7890/6 7915/1</p> <p><b>outstanding</b> [7] 7727/10 7765/11 7769/13 7769/21 7837/11 7837/12 7900/15</p> <p><b>overarching</b> [1] 7863/10</p> <p><b>overlap</b> [1] 7732/2</p> <p><b>override</b> [7] 7778/7 7800/24 7827/15 7843/25 7844/10 7845/16 7846/24</p> <p><b>overruled</b> [5] 7703/2 7708/19 7759/12 7837/13 7913/15</p> <p><b>overruling</b> [1] 7755/16</p> <p><b>overwhelming</b> [1] 7810/12</p> <p><b>owed</b> [2] 7943/15 7949/3</p> <p><b>owes</b> [1] 7818/12</p> <p><b>own</b> [18] 7684/12 7713/4 7713/7 7716/9 7732/10 7812/4 7824/5 7846/12 7868/5 7876/23 7896/12 7912/7 7931/15 7942/20 7943/3 7958/25 7962/7 7963/20</p>	<p><b>Panoff's</b> [3] 7784/24 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<p><b>Park</b> [2] 7670/18 7934/14</p> <p><b>part</b> [31] 7678/24 7689/3 7694/9 7710/19 7717/6 7717/7 7717/9 7732/6 7741/20 7783/17 7786/23 7787/20 7831/14 7835/9 7838/20 7853/10 7879/1 7889/2 7902/19 7912/20 7919/15 7921/14 7935/3 7940/22 7942/5 7948/22 7951/17 7953/7 7953/24 7956/15 7969/20</p> <p><b>parte</b> [1] 7970/22</p> <p><b>participant</b> [1] 7732/7</p> <p><b>participate</b> [1] 7869/2</p> <p><b>participated</b> [1] 7810/13</p> <p><b>participating</b> [1] 7745/22</p> <p><b>particular</b> [12] 7711/20 7717/25 7718/6 7723/5 7798/18 7828/23 7871/1 7876/4 7876/14 7877/14 7956/17 7969/17</p> <p><b>particularly</b> [7] 7763/7 7800/12 7832/17 7866/1 7867/4 7874/8 7937/4</p> <p><b>parties</b> [18] 7862/10 7930/16 7932/19 7934/14 7937/9 7938/15 7940/25 7942/14 7943/9 7944/2 7945/23 7946/5 7947/21 7948/3 7948/14 7952/25 7953/25 7954/23</p> <p><b>partner</b> [7] 7840/11 7843/2 7843/12 7903/10 7908/21 7909/1 7909/7</p> <p><b>partners</b> [6] 7841/18 7842/1 7842/2 7842/13 7842/21 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<p><b>P</b></p> <p><b>pursuant...</b> [3] 7782/14 7782/17 7831/18</p> <p><b>pursuing</b> [1] 7780/20</p> <p><b>pushing</b> [3] 7742/2 7832/18 7968/21</p> <p><b>put</b> [119] 7674/23 7675/22 7676/24 7680/13 7681/2 7681/9 7682/12 7682/20 7682/21 7684/8 7686/3 7686/3 7686/25 7687/25 7688/7 7688/17 7689/22 7690/7 7690/11 7691/2 7691/7 7691/20 7691/25 7694/19 7695/8 7695/25 7697/12 7697/12 7698/18 7702/1 7703/25 7705/6 7706/7 7712/25 7726/7 7727/18 7728/13 7728/25 7730/17 7733/11 7734/1 7735/5 7738/21 7740/9 7745/11 7745/12 7745/25 7746/3 7746/18 7746/22 7746/23 7747/1 7747/2 7747/2 7748/6 7748/12 7757/19 7765/3 7766/1 7769/1 7777/12 7784/12 7788/24 7790/2 7790/4 7793/6 7794/20 7798/16 7803/10 7809/6 7809/7 7809/15 7809/15 7816/16 7834/11 7835/23 7836/7 7854/2 7854/2 7855/7 7856/13 7856/15 7856/22 7857/19 7858/1 7863/16 7868/13 7870/8 7871/4 7871/24 7879/20 7880/10 7880/22 7881/5 7885/17 7886/3 7892/25 7897/14 7897/19 7900/10 7906/1 7906/3 7906/22 7912/10 7922/12 7923/6 7924/7 7924/8 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7815/20 7818/12 7819/9 7819/15 7820/3  7820/16 7820/25 7822/14 7828/18 7831/25  7851/10 7853/9 7855/11 7855/12 7865/11  7874/21 7874/22 7874/23 7889/12 7902/8  7902/19 7902/21 7902/24 7903/15 7903/19  7903/25 7904/16 7904/21 7905/12 7905/20  7906/17 7906/24 7907/4 7907/10 7907/11  7907/25 7933/10 7950/13 7952/21 7953/7  7954/1 7954/3 7955/4 7958/23 7961/18  <b>Shkreli's</b> [10] 7675/5 7683/23 7685/12 7700/3  7887/25 7888/1 7950/14 7950/16 7953/1  7959/20  <b>shocked</b> [1] 7853/1  <b>short</b> [8] 7784/12 7819/2 7836/5 7843/18  7886/15 7900/5 7906/1 7935/16  <b>show</b> [32] 7676/25 7687/5 7690/10 7690/12  7708/8 7714/4 7723/5 7737/16 7740/12  7741/20 7751/23 7757/25 7762/16 7771/11  7785/9 7785/10 7793/18 7800/4 7801/23  7801/25 7802/19 7803/6 7803/7 7880/7  7880/12 7880/21 7903/23 7903/24 7905/14  7905/15 7907/18 7942/5  <b>showed</b> [9] 7675/5 7688/13 7697/8 7750/23  7755/15 7785/2 7810/2 7810/5 7916/9  <b>showing</b> [11] 7697/22 7723/8 7723/15 7734/23  7752/20 7754/4 7772/6 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<b>sitting</b> [12] 7741/17 7767/18 7768/9 7781/7  7792/11 7794/1 7796/5 7850/22 7889/15  7889/18 7924/12 7925/1  <b>situation</b> [17] 7693/6 7705/6 7820/18 7825/3  7865/16 7867/3 7868/24 7876/5 7878/11  7884/2 7893/11 7896/14 7941/20 7942/8  7945/7 7959/18 7963/6  <b>situations</b> [1] 7925/10  <b>six</b> [10] 7684/2 7726/14 7758/14 7868/12  7894/20 7902/15 7934/22 7944/24 7944/24  7945/1  <b>skeptical</b> [1] 7868/4  <b>skipped</b> [1] 7805/5  <b>sleeping</b> [2] 7851/14 7868/13  <b>small</b> [2] 7760/10 7760/16  <b>smart</b> [1] 7712/19  <b>smiling</b> [1] 7849/4  <b>smirks</b> [1] 7898/5  <b>SMITH</b> [5] 7670/15 7712/21 7810/2 7923/19  7924/17  <b>Smith's</b> [2] 7810/7 7925/23  <b>snippet</b> [1] 7820/15  <b>sold</b> [1] 7958/25  <b>solely</b> [2] 7782/19 7877/23  <b>solved</b> [1] 7839/6  <b>someone</b> [20] 7714/2 7735/6 7745/14 7800/21  7821/7 7824/11 7869/21 7879/14 7880/1  7892/15 7892/23 7893/1 7894/24 7896/21  7915/16 7920/6 7921/11 7930/6 7942/6 7945/8  <b>sometimes</b> [11] 7712/7 7712/7 7712/8 7881/2  7881/3 7881/3 7898/4 7899/4 7899/5 7945/21  7945/23  <b>someways</b> [1] 7732/2  <b>somewhat</b> [3] 7687/19 7941/2 7963/3  <b>soon</b> [6] 7671/2 7726/2 7802/5 7885/19  7965/18 7967/25  <b>sooner</b> [1] 7971/25  <b>sorry</b> [40] 7680/24 7683/8 7693/10 7693/19  7696/25 7696/25 7699/5 7701/1 7708/20  7723/24 7747/3 7748/18 7755/25 7761/20  7763/13 7779/13 7794/21 7794/21 7794/24  7795/1 7795/1 7796/17 7801/1 7807/24  7814/12 7815/15 7825/13 7833/20 7840/20  7840/22 7885/11 7887/16 7903/3 7909/24  7933/20 7935/9 7941/24 7955/2 7957/15  7971/13  <b>sort</b> [18] 7803/4 7803/10 7811/3 7812/25  7832/8 7838/3 7879/8 7898/10 7942/9 7945/15  7946/4 7947/1 7951/12 7954/16 7955/6  7958/16 7968/23 7969/9  <b>sorts</b> [3] 7851/18 7869/8 7921/25  <b>sought</b> [4] 7816/5 7853/8 7957/4 7958/21  <b>sound</b> [1] 7961/5  <b>sounded</b> [1] 7860/25  <b>sounds</b> [4] 7926/23 7937/3 7960/3 7970/13  <b>source</b> [2] 7884/16 7959/3  <b>sources</b> [1] 7915/7  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<p><b>S</b> special... [31] 7843/10 7843/20 7844/4 7844/19 7845/5 7846/10 7851/7 7863/11 7863/22 7875/6 7875/15 7879/10 7884/14 7887/24 7889/14 7889/16 7901/11 7901/15 7901/17 7902/2 7908/8 7908/14 7910/4 7912/20 7913/14 7915/20 7916/18 7918/15 7920/5 7921/8 7927/12</p> <p><b>specific</b> [32] 7671/17 7672/18 7681/23 7683/15 7692/13 7692/13 7692/16 7692/19 7692/21 7692/24 7701/23 7702/4 7702/22 7719/9 7735/8 7759/3 7759/5 7778/9 7779/16 7787/9 7787/14 7796/6 7802/23 7802/24 7811/6 7824/7 7843/15 7915/15 7915/15 7938/1 7943/19 7944/25</p> <p><b>specifically</b> [3] 7858/24 7878/20 7907/17</p> <p><b>specificity</b> [1] 7854/24</p> <p><b>specter</b> [2] 7864/5 7920/13</p> <p><b>speculate</b> [15] 7710/8 7711/3 7711/7 7712/5 7712/13 7715/11 7715/12 7716/7 7717/18 7718/11 7719/25 7721/4 7721/5 7833/16 7834/18</p> <p><b>speculation</b> [1] 7718/13</p> <p><b>spend</b> [2] 7752/6 7918/7</p> <p><b>spent</b> [3] 7740/11 7880/14 7880/18</p> <p><b>spirit</b> [1] 7944/22</p> <p><b>spoken</b> [5] 7801/7 7838/12 7862/11 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7880/15 7880/22</p>	<p>7880/23 7881/1 7881/13 7881/15 7881/19 7881/19 7882/25 7883/4 7883/49 7883/20 7883/24 7885/8 7890/5 7890/5 7891/5 7920/23 7924/8 7939/1 7940/2 7947/16</p> <p><b>states</b> [26] 7670/1 7670/3 7670/3 7670/10 7670/13 7670/16 7695/19 7744/16 7744/18 7757/14 7757/15 7757/18 7758/22 7767/25 7768/1 7768/12 7770/10 7774/21 7780/24 7781/3 7798/5 7862/12 7862/15 7862/16 7864/15 7904/25</p> <p><b>stating</b> [1] 7702/22</p> <p><b>statistic</b> [1] 7922/22</p> <p><b>status</b> [2] 7768/1 7971/10</p> <p><b>stay</b> [5] 7690/17 7701/12 7917/10 7951/4 7971/1</p> <p><b>staying</b> [1] 7933/10</p> <p><b>stays</b> [6] 7933/19 7934/15 7934/18 7949/20 7954/25 7955/14</p> <p><b>stenography</b> [1] 7670/24</p> <p><b>step</b> [11] 7777/10 7777/11 7802/7 7844/22 7844/22 7856/6 7857/5 7891/20 7912/3 7917/24 7918/11</p> <p><b>steps</b> [9] 7802/9 7831/16 7831/20 7832/2 7832/8 7833/11 7853/13 7862/6 7917/25</p> <p><b>Steve</b> [1] 7789/1</p> <p><b>Steven</b> [2] 7789/2 7928/8</p> <p><b>still</b> [23] 7695/1 7711/23 7737/22 7768/16 7822/10 7823/6 7826/10 7827/6 7837/24 7887/19 7923/20 7924/7 7928/8 7945/15 7955/23 7960/2 7964/6 7965/14 7965/20 7965/23 7966/5 7966/17 7967/18</p> <p><b>stipulation</b> [1] 7955/7</p> <p><b>stock</b> [38] 7672/9 7672/10 7672/11 7672/12 7675/7 7675/18 7678/9 7678/10 7679/5 7679/10 7679/11 7679/13 7679/14 7679/23 7681/22 7704/11 7704/18 7704/19 7704/19 7704/21 7783/5 7788/14 7905/5 7958/5 7958/7 7958/9 7958/14 7958/14 7958/24 7959/6 7959/8 7961/11 7961/17 7961/18 7961/20 7962/1 7962/3 7962/14</p> <p><b>stocks</b> [1] 7675/14</p> <p><b>stonewalling</b> [1] 7738/17</p> <p><b>stood</b> [1] 7803/12</p> <p><b>stop</b> [3] 7704/16 7867/15 7868/12</p> <p><b>story</b> [23] 7686/11 7686/11 7686/12 7686/15 7689/6 7689/7 7827/13 7835/10 7835/15 7835/20 7835/21 7835/25 7836/17 7836/25 7837/6 7837/22 7838/14 7838/17 7838/18 7838/19 7853/23 7853/24 7892/16</p> <p><b>straight</b> [1] 7792/25</p> <p><b>straight-forward</b> [1] 7792/25</p> 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